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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 17th March, 2016

+ **MAC.APP. 306/2013**

SHRIRAM GENERAL INSURANCE COMPANY LTD

Through Mr. P Acharya, Adv. Appellant

versus

ARCHANA DEVI AND ORS

Through Mr. Rajnish K Jha, Adv. Respondent

+ **MAC.APP. 618/2015**

ARCHANA DEVI & ORS

Through Mr. Rajnish K Jha, Adv. Appellant

versus

SHRIRAM GENERAL INSURANCE CO LTD

Through Mr. P Acharya, Adv. Respondent

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Both these appeals are directed against the judgment dated 04.10.2012 of the motor accident claims tribunal (tribunal) in accident claim case

registered as case No.323/2011 on the petition under sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) brought by the wife and other family members of Kanhaiya Lal @ Kanhaiya Prasad (appellants in MAC.APP.No.618/2015) seeking compensation on account of his death in a motor vehicular accident that occurred at about 7.24 PM on 06.01.2011 involving the motor vehicle described as HR 46B 5979 (the offending vehicle) admittedly insured against third party risk for the period in question with Shri Ram General Insurance Co. Ltd. (appellant in MAC.APP.No.306/2013).

2. Since both appeals give rise to certain common questions they have been heard together and are being decided through this common judgment.

3. In the claim case, decided by the tribunal by judgment dated 04.10.2012, the driver and owner of the offending vehicle were impleaded as respondents, in addition to the insurer (appellant in MAC.APP.No.306/2013). The claimants during the inquiry proved that the deceased was working as chartered accountant at salary with B M Chatrath & Co., D-26, Sector 3, Noida (UP) on the basis, *inter alia*, of letter of appointment (Ex.PW1/6) effective from 01.11.2007. The appointment initially was on probation for a period of six months and thereafter on regular basis. The salary certificates issued by the employer company reveal that earlier the deceased was paid ₹12,000/- per month (page 145 of the tribunal's record) which was increased to ₹15,000/- per month (at page 135 of the tribunal's record). The claimants also proved the income tax returns (ITRs) for the assessment year 2007-08 (page 279 of the tribunal's record) and for assessment year 2009-10 (page 265 of the tribunal's record). While

in assessment year 2007-08, the deceased had declared income from salary at ₹1,21,525/-, in the assessment year 2009-10 his income had increased to ₹1,86,334/- apparently on account of rise in the salary. This fact is also reflected in the statement of account of the bank (Ex.PW1/9) through which he was paid the salary by the employer.

4. The tribunal found that the date of birth of the deceased was 25.07.1980 and thus concluded that he was over 30 years but less than 31 years on the date of the accident and on such basis adopted the multiplier of 17. It calculated the notional income by adding 30% as the element of future prospects of increase and on such basis computed the loss of dependency in the sum of ₹30,88,484/-. It added the non-pecuniary damages in the total sum of ₹1,30,000/- and thus awarded ₹32,18,484/- as the total compensation payable with interest.

5. The insurer, by its appeal (MAC.APP.No.306/2013), questions the calculation of loss of dependency mainly on the ground that the salary included a special allowance of ₹500/- per month which, in its submission, could not have been treated as regular income. The claimants, on the other hand, by their appeal (MAC.APP.No.618/2015), contend that the future prospects should have been taken to the extent of 50% rather than 30% only in view of dictum in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121.

6. Having regard to the clear evidence adduced showing the income of the deceased from his private service in the company of chartered accountants to be on the progressive rise, future prospects have to be factored in at the rate of 50% inasmuch as the deceased was less than 40

years old [*Sarla Verma* (supra)]. There is no merit in the contention of the insurance company that the special allowance of ₹500/- per month could not have been added. The income tax returns clearly show that the said component of the income has been regular and has even been subjected to tax.

7. Thus, the loss of dependency is recalculated with addition of 50% of future prospects considered. The total income in this view would be $(1,86,334 \times 150 \div 100)$ ₹2,79,501/-. Deducting $1/4^{\text{th}}$ towards personal and living expenses, inasmuch as the deceased was survived by five dependant family members, the loss of annual dependency comes to $(2,79,501 \times 3 \div 4)$ ₹2,09,626/-. On the multiplier of 17, the total loss of dependency comes to $(2,09,626 \times 17)$ ₹35,63,642/-. This would mean the compensation needs to be enhanced by $(35,63,642 - 30,88,484)$ ₹4,75,158/-.

8. The claimants further submit that non-pecuniary damages have to be properly added. Reliance is placed on *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, wherein sum of ₹1 lakh each was awarded on account of love and affection and loss of consortium and ₹25,000/- towards loss of estate and funeral expense. Since the tribunal added only ₹1,30,000/- under these heads, the amount of ₹1,20,000/- will have to be further added.

9. Thus, the total compensation payable in the case is enhanced by $(4,75,158 + 1,20,000)$ ₹5,95,158/-.

10. The entire enhanced portion of the compensation shall be payable to the first claimant Archana Devi (widow). Needless to add, it shall carry interest as provided by the tribunal.

11. By order dated 05.04.2013 in MAC.APP.No.306/2013, the insurance company had been directed to deposit the entire awarded compensation with up-to-date interest with the Register General of this Court whereupon 70% was allowed to be released. The Registrar General shall now release the balance lying in deposit. The insurance company is directed to deposit the amount payable in terms of the enhancement in the compensation as above with the tribunal within 30 days whereupon it shall be released in terms of abovementioned directions.

12. The statutory deposit, if made by the insurance company, shall be refunded.

13. Both appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 17, 2016
VLD