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

Date of Decision: 25.04.2016

+ MAC.APP. 136/2013

NEW INDIA ASSURANCE CO LTD

..... Appellant

Through: Mr. K.L. Nandwani and Mr. P. Acharya,
Advocates

versus

GEETA SINDHWANI AND ORS

..... Respondents

Through:

+ MAC.APP. 201/2013

GEETA SINDHWANI & ANR.

..... Appellants

Through:

versus

SURAJMAL & ORS.

..... Respondents

Through: Mr. K.L. Nandwani and Mr. P. Acharya,
Advocates for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Ankit Sindhwani, a bachelor, 23 years old, died as a result of a motor vehicular accident that occurred on the night on 15 and 16.09.2011

involving negligent driving of a truck bearing registration no.RJ-14GD-1769 (the offending vehicle), admittedly insured against third party risk with New India Assurance co. Ltd. (appellant in M.A.C. Appeal 136/2013). His parents (appellants in M.A.C Appeal No.201/2013) instituted an accident claim case (suit no. 136/2011) on 15.10.2011 seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988 (the M.V. Act).

2. The Motor Accident Claims Tribunal (Tribunal), after inquiry, decided the claim petition by judgment dated 08.11.2012 awarding compensation in the sum of ₹14,31,907/- with interest in favour of the claimant directing the insurer to pay.

3. The insurer has come up in an appeal (M.A.C Appeal No. 136/2013) questioning the computation on the ground that the element of future prospects has been wrongly added. It points out that the document on record, particularly the appointment letter dated 02.12.2009, issued by HCL Technologies Ltd. where the deceased was employed as a Customer Service Executive showed that he was not in permanent employment since the engagement could be terminated by a notice of 30 days by either side. It also refers to the salary slips of December 2009 and September 2011 to submit that there was no progressive rise in the income.

4. *Per contra*, the claimants by their appeal (M.A.C Appeal 201/2013) submit that the loss of dependency has not been properly worked out as the multiplier of 11 was wrongly applied taking into account the age of the claimants. It has been submitted that the multiplier of 17 would have been proper one, given the age of the deceased.

5. The claimants also submitted that the award in the sum of ₹25,000/- towards loss of love and affection, ₹10,000/- towards loss of estate and ₹5,000/- towards funeral expenses are inadequate.

6. At the hearing, none appeared on behalf of the claimants to make any submission.

7. It is noted that during the inquiry before the tribunal, the salary slips for the entire period of employment of the deceased with HCL Technologies Ltd. were proved vide Ex. PW2/1. The Tribunal considered the evidence about the employment and emoluments earned and computed the loss of dependency in the following manner :-

“..12. PW-2, Sh. Rameshan, Group Manager (HR) HCL Technologies Ltd. stated that at the time of joining Sh. Ankit Sindhvani, his annual salary was ₹1,62,605/- and at the time of his death the annual salary was ₹1,95,641/-. PW-2 stated that at the time of death of Sh. Ankit, monthly salary was ₹15,001/- which included basic salary of ₹3501/-, HRA of ₹1755/-, special allowance of ₹504/-, skill allowance of ₹1907/-, flexi allowance of ₹2000/- medical allowances of ₹1250/-, process allowances of ₹1625/-, meal allowance of ₹750/-, advance statutory bonus ₹700/- and attendant allowance of ₹1000/-. PW-2 further stated that company was deducting a sum of ₹3000/- per month towards course fee for software training after which the employee was entitled for transfer to software division as software engineer and after completing the said software training, the salary of the employee might have increased in future. PW-2 stated that the deceased was a permanent employee of the company. PW-2 also stated that the deceased was paid ₹12,000/- in the month of July 2011 towards association bonus. During cross-examination PW-2 stated that twice in a year the employee appraisal was done on the basis of which salary increments were given but he had not brought any record in this regard. PW-2 also stated that basic

salary of the deceased at the time of joining and in the month of September of 2011, was ₹3510/-. PW-3 further stated that increments did not necessary to happen in the basic salary alone as it could be given in other components. PW-3 further stated that for customer service executive a candidate must had graduation and good communication skill and knowledge in computer. PW-3 also stated that skill allowance was not a fixed allowance but based on multiple skill courses undergone by the employee and flexi allowance was given towards conveyance and transport. PW-2 exhibited the authority letter as Ex. PW-2/A, salary record of Sh. Ankit Sindhwani as Ex. PW-2/a and copies of recruitment documents as Ex. PW-2/2.

13. I have gone through the material on record. The salary slip, Ex. PW-2/1 for the month of August 2011 shows standard monthly salary of deceased to be ₹14,001/- and earning to be ₹19,052/-. The earning of the deceased is varying in different salary slips. However, ₹1000/- is shown in all the salary slips towards attendance allowance. Some amount is also shown towards overtime. The overtime varies in different pay slips. The total amount towards overtime from January 2011 to September 2011 comes to ₹33,258/-. The average overtime payment comes to ₹3695/- (₹33,258/9) per month. These both the amounts are liable to be added in the standard monthly salary. After adding these two amounts, the standard monthly salary comes to ₹18,696/- (₹14,001 + 3695+1000). The flexi amount (conveyance and transport allowance), medical allowance, meal allowance can not be said to be for the benefit of the family and hence cannot be considered as party of salary for calculating compensation. Therefore, after deducting the above said amount the salary comes to ₹14,696/- (₹18696-4000).

14. The deceased was permanent employee of the said company and had done Bachelor of Engineering (B.E.). The deceased was getting increments twice in a year. The PW-2 had stated that deceased was getting increments in January and in July in the form of association bonus. The petitioners are entitled for 50% increase in the income on account of future

prospect. As stated above, the monthly salary of the deceased is taken to be ₹14,696/- per month. Adding 50% of the salary, the monthly income comes to ₹22,044/- (14,696 + 7348). The annual income of the deceased would be ₹2,64,528/- (₹22,044 x 12). After deduction of income tax @ 10%, the net income of the deceased comes to ₹2,53,075/- (₹2,64,528- ₹11453). Interest of justice in the present case would be met if ½ i.e. ₹1,26,537/- is deducted as the personal and living expenses of the deceased (as the deceased was bachelor). After such deduction the contribution to the family (dependents) is determined as ₹1,26,537/- per annum. The multiplier applicable would be 11 (as the age of mother of deceased was about 52 years (approximately) as per PAN card, Ex. PW-1/6. Therefore, the total loss on dependency would be ₹13,91,907/- (₹1,26,537 x 11)...”

8. Merely because there was a stipulation in the employment contract that the engagement of the deceased with HCL Technologies Ltd. could be terminated by notice of one month by either side, it cannot be said that his employment was irregular. The salary slips which have been properly examined and analyzed by the Tribunal do show a progressive rise in the income. In these circumstances, the objection to the addition of future prospects must be repelled.

9. The objection of the claimants that the multiplier of 17 should have been adopted, according to the age of the deceased, cannot be accepted. It is settled law that the multiplier is to be taken as per the age of the deceased or the claimant, whichever is higher. [See : judgment of this Court in *Oriental Insurance Co. Ltd. v. Rekha Vashisht* (MAC.APP.No.636/2009) decided on 18.02.2016].

10. There is merit in the contention of the claimants with regard to the non pecuniary damages. Following the view taken in *Rajesh & Ors. v.*

Rajbir Singh & Ors, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, award of ₹1 Lakh towards loss of love and affection and ₹25,000/- each towards loss of estate and funeral expenses deserve to be granted. Ordered accordingly. This would mean the award would stand enhanced by ₹1,10,000/-.

11. It is noted that the Tribunal while granting compensation allowed interest only at the rate of 7.5% p.a. Following the consistent view taken by this court (see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*), the rate of interest is increased to 9% p.a. from the date of filing of the petition till realization.

12. It is directed that entire enhanced portion of the compensation including the one payable on account of the increase in the rate of interest shall fall to the share of the first claimant (mother) alone.

13. By order dated 12.02.2013, in M.A.C.A 136/2013, the insurance company had been directed to deposit the entire awarded amount with upto date interest with UCO Bank, Delhi High Court Branch, within the period prescribed and upon such deposit being made, 70% was allowed to be released to the claimants in terms of the impugned judgment. The balance shall also now be released to the claimants in terms of the impugned judgment / award. The Registrar General shall take necessary steps in this regard. The insurance company will be obliged to pay more on account of the modification of the award by this judgment. It is directed to do so by making the requisite amount available in the hands of the Tribunal within 30 days from today whereupon it shall be released as per the above directions to

the claimants. The statutory amount, if deposited, by the insurer shall be refunded.

14. Both appeals are disposed of in the aforesaid terms.

**R.K. GAUBA
(JUDGE)**

APRIL 25, 2016
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