$~22

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

Date of Decision: 18th April, 2016

\+ **MAC.APP. 420/2013**

SARITA DEVI & ORS. ..... Appellants

Through: Mr.O.P. Mannie, Adv.

versus

POPAT DUBEY & ORS. ..... Respondents

Through: Mr. Pankaj Gupta for Ms. Suman Bagga, Adv. for R-3.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On the death of Naresh Kumar in a motor vehicular accident that occurred on 18.01.2008 involving motor vehicle described as Tanker bearing registration No. MH 12DT 7858 (the offending vehicle), admittedly insured against third party risk with the third respondent (the insurer) for the period in question, a claim petition (MACP No. 893/2008) was preferred by the appellants (claimants) on 26.02.2008 invoking Section 163-A of Motor Vehicles Act, 1988 (MV Act).

2. The tribunal, upon inquiry, found that the accident had occurred resulting in death on account of use of the offending vehicle which is owned by the second respondent and granted compensation in the sum of Rs. 4,62,839/- which includes Rs. 4,53,339/- on account of loss of dependency calculated on the notional income of Rs. 40,000/- with the multiplier of 17. The compensation was granted with interest @ 7.5% per annum from the date of filing of the petition till realization.

3. By the appeal at hand, the claimants submit that the proper multiplier in terms of second schedule of MV Act was 18, since the deceased was 28 year old on the relevant date. It is also submitted that the rate of interest as levied is low.

4. Having heard both sides, the contentions of the claimants are found to be correct. As per the age of the deceased, the multiplier of 18 should have been applied and, therefore, the compensation deserves to be increased by an amount of Rs. 26,667/-, it representing the annual loss of dependency worked out by the tribunal. The compensation thus, would, stand increased to Rs. 4,89,506/-, rounded off to Rs. 4,90,000/-.

5. 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% per annum from the date of filing of the petition till realization.

6. The insurance company (third respondent) shall be liable to deposit the enhanced portion of the compensation including on account of increase in the rate of interest with the tribunal within 30 days of this order whereupon it shall be released entirely in favour of the first claimant (first appellant) in terms of the impugned judgment.

7. It is noted that the insurance company's contentions about breach of terms and conditions of the insurance policy was upheld by the tribunal and it was granted recovery rights. Needless to add, the said recovery rights shall include right to recover the enhanced portion of the amount.

8. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 18, 2016/nk