$~R-139 & 140

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

Date of Decision: 02.06.2016

\+ **MAC.APP. 123/2008 & CM No.2938/2008**

NATIONAL INSURANCE CO. LTD. ..... Appellant
Through:Mr. Pradeep Gaur, Advocate

versus

SANDHYA SURESH AND ORS. ..... Respondents
Through: None

\+ **MAC.APP. 160/2008**

SANDHYA SURESH AND ORS. ..... Appellants
Through: None

versus

KARAN SINGH AND ORS. ..... Respondents
Through: Mr. Pradeep Gaur, Advocate for R-3

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Viswanathan Suresh, a qualified engineer, working as a surveyor with M/s. Bureau Veritas Industrial Services (I) Pvt. Ltd., then aged 34 years, suffered injuries in a motor vehicular accident that occurred on 04.11.2000 statedly on account of negligent driving of a truck bearing registration

no.HR-29D-0315 (offending vehicle) and died in the consequence. His dependent family members (appellants in MAC A 160/2008) instituted an accident claim case (suit no.459/2000) on 11.12.2000 seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988 (M.V. Act) impleading Karan Singh, Rajender Kumar and National Insurance co. Ltd. as party respondents, describing them as the owner, driver and insurer respectively of the offending vehicle, the last (insurer) now being appellant (in MACA 123/2008). The claim case was brought before the Motor Accident Claims Tribunal (tribunal) on the averments that the accident had occurred leading to the death on account of negligent driving of the offending vehicle. This plea, upon inquiry, was upheld by the tribunal by judgment dated 19.11.2007. There is no challenge to the said finding on fact.

2. By the impugned judgment, the tribunal awarded compensation in the sum of ₹26,06,520/- in favour of the claimants, also apportioning a part in favour of Visalakshi Viswanathan, fourth respondent (proforma party in both the appeals), she being the mother of the deceased. The insurer was burdened with the responsibility to satisfy the award, it having admitted the insurance cover against third party risk for the offending vehicle.

3. The appellant challenged the award (by MACA 123/2008) on several grounds. At the hearing, the grounds pressed are that the tribunal fell into error by adding the element of future prospects of increase and further that in awarding the compensation, the amount of ₹16,26,000/- under the personal accident insurance policy of the employer company should have been deducted.

4. *Per contra*, the claimants, by their appeal (MACA 160/2008), sought enhancement of the compensation and the rate of interest on the ground the method of calculation adopted by the tribunal was erroneous. The claimants submitted through the appeal that the income had not been properly computed, the income tax liability had been wrongly deducted over and above the deduction on account of personal and living expenses, awards under the non-pecuniary heads of damages were inadequate and that the awards should also been granted on account of expenditure towards transportation of the dead body, loss of amenities and happiness of life, loss to estate, loss of expectancy of life, loss of gratuitous service to the family, etc.

5. Noticeably, in their appeal (MACA 160/2008), the claimants admitted having received ₹16,26,000/- under the personal accident insurance from the employer and also conceded that the said amount of money deserved to be discounted from the compensation payable in the matter at hand.

6. Both the appeals were directed to be shown in the category of regular matters, to come up on their own turn. When these appeals, now the oldest on board of this court, were taken up and called out, no one would appear on the side of the claimants to assist. Arguments of the counsel for the insurer have been heard and, with his assistance, the record perused.

7. The claimants had proved at the inquiry that the deceased was a qualified engineer and employed in regular capacity as a surveyor with M/s. M/s. Bureau Veritas Industrial Services (I) Pvt. Ltd., his age on the relevant date being 34 years. His salary at the time of death was proved by salary

slip (Ex. PW2/1) which shows the total emoluments to be ₹22,692/-. The tribunal did not take into account the car allowance and uniform allowance. In view of this court, this was not proper as the said amounts were part of the regular remuneration received by the deceased and would be resulting in corresponding savings and thus of value in calculating the loss of dependency.

8. Having regard to the nature of employment and terms and conditions of the engagement, the element of future progressive rise in income has to be factored in. [see judgment dated 28.03.2016 in MAC.APP. 548/2013 *United India Insurance Co. Ltd. v. Kamla & Ors*.]

9. The tribunal adopted the multiplier of 15. This needs to be corrected. According to the dictum in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.,* (2009) 6 SCC 121, the multiplier of 16 would apply. But before the loss of dependency is worked out, deduction has to be made on account of income tax liability, this in view of the ruling in *Sarla Verma* (supra). Taking into account the gross emoluments of ₹22,692/- p.m., as per the rates of income tax prevalent for the financial year 2000-2001, income tax liability comes to ₹55,000/- p.a. The loss of dependency is thus calculated on the income of (₹22,692 x 12 – ₹55,000) ₹2,17,304/-. Since there were four dependent family members left behind, deduction on account of personal and living expenses has to be made to the extent of one-fourth. Thus, the loss of dependency is calculated as (₹2,17,304 x 150/100 x 3/4 x 16) ₹ 39,11,472/- ₹39,12,000/-.

10. The tribunal had granted only ₹25,000/- towards loss of love and affection and consortium put together and ₹5,000/- towards funeral expenses. Having regard to the date of accident and the view taken in M*adhu Marwaha & Anr vs. Dal Chand & Anr., FAO 102/2001*, decided on 01.02.2016, amounts of ₹50,000/- each towards loss of love and affection and consortium and ₹10,000/- each towards loss of estate and funeral expenses are added. No award under any other head is admissible. Thus, the total compensation in the case comes to (₹39,12,000 + ₹1,20,000) ₹40,32,000/-.

11. The amount of ₹16,26,000/- received under the personal accident insurance is deducted, as per admission of the claimants in their appeal (MACA 160/2008). In this view, the amount payable as compensation in the case at hand is worked out as (₹40,32,000/- (-) ₹16,26,000/-) ₹24,06,000/-.

12. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.].

13. By order dated 08.04.2008 in MACA 123/2008, it was noted that the insurance company had no objection to the release of 50% of the awarded amount in favour of the claimants. On that basis, the insurer was directed to deposit 50% of the awarded amount with the Registrar General of this court within the period specified, and for the same to be released to the claimants in terms of the award. The insurer shall now be obliged to pay the balance

of its liability under the modified award which it may do by requisite deposit with the tribunal within 30 days of this judgment.

14. It is noted that the tribunal had specified the amounts payable to the different claimants as per their share in the compensation. Since the compensation has been reduced, it is directed that the entire balance now payable shall fall to the share of the first claimant, Smt. Sandhya Suresh (widow), though the other claimants including the mother will be entitled to receive the amount payable additionally on account of increase in the rate of interest which would be proportionate to the shares received by each.

15. The statutory deposit, if made, shall be refunded.

16. Both appeals and the pending application are disposed of in above terms.

17. Since the award has been modified, a copy of this judgment shall be sent by the registry to the claimants by registered post at the given address.

(R.K. GAUBA)
JUDGE

JUNE 02, 2016
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