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

% **Reserved on : 12th January, 2016**
Pronounced on : 22nd January, 2016

+ **MACA 217/2013**

UNITED INDIA INSURANCE CO. LTD. Appellant
Through: Mr. Sameer Nandwani, Adv.

versus

KAILASH & ORS. Respondents
Through: Mr. KVS Gupta & Mr. N.K.
Bhambri, Advs. for R-1 & 2.
Mr. Amitoj Singh proxy for Ms.
Avnish Ahlawat, Adv. for DTDC.

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

JUDGMENT

R.K.GAUBA, J

1. This appeal under Section 173 of the Motor Vehicles Act, 1988 (“the MV Act”) has been preferred by insurer assailing the award of compensation granted by the Motor Accident Claims Tribunal (“the Tribunal”) by judgment dated 10th January, 2013 in favour of the first and second respondents on the basis of their claim petition under Section 166 read with Section 140 of MV Act, registered as case No. 486/2012 (arising out of detailed accident report) on account of death of their son named Vishal (born on 8.3.1997), then aged about 15 years, in a motor vehicular accident that occurred at about 3.30 p.m. on 19.2.2012 near Metro Pillar 413, Lokesh Cinema, Nangloi, Delhi involving bus bearing registration No. DL 1PC 8300 (“the bus”) of fourth respondent,

Delhi Transport Corporation (DTC), driven by its employee, the third respondent (Anil Kumar) statedly in rash or negligent manner. By the impugned judgment, the Tribunal awarded compensation in the sum of ₹ 10,17,000/- with interest @ 7.5 % per annum, apportioning it in equal shares in favour of the first two respondents (the claimants) giving suitable directions for protection of their interest by directing 50% of the awarded amount to be put in fixed deposit accounts. Since the bus (the offending vehicle) was insured with the first appellant, it was held jointly and severally liable to pay the awarded amount and directed to discharge the liability by deposit within a period of 30 days and in case of default to suffer penal interest @ 12% per annum.

2. Feeling aggrieved with the award, and the directions, the present appeal has been preferred questioning the computation of compensation on the ground that the income of the deceased child has been wrongly assumed notionally @ ₹10,800/- to calculate the loss of dependency on the basis of multiplier of 15. It has been submitted that sufficient evidence had not been adduced to show that the deceased child would have pursued any professional course or could have grown into a person with such potential income as has been assumed. It has been argued that the multiplier of 15 was wrongly adopted on the basis of the age of the deceased child and that the multiplier should have been adopted on the basis of the age of the parents in general, mother in particular and, thus, the computation should have been made on the basis of multiplier of 13.

3. Having heard the learned counsel on both sides and having gone through the trial court record, this Court finds the submissions of the appellant with regard to the assessment of income unmerited. The deceased child was born on 8.3.97 and per the evidence of his father

Kailash (PW-1) he was a student of 6th standard in Subhash Mahabali Inter College, Dalelnagar, Hardoi. On the date of the accident/death he was 15 years old. Though his father himself is an illiterate person, he testified that the deceased child was a brilliant student who aspired to be a doctor and would even help his siblings in the studies. The progress report (Ex.PW-1/4) of the deceased child for the academic year 2011-12 proved by the witness does corroborate his word about the academic merit of the deceased. In these circumstances, it is not correct to contend that the Tribunal did not have any material on the basis of which the potential of the child to become a useful member of the family could be deduced.

4. The Tribunal has tentatively assessed the potential income of the deceased child at ₹ 10,800/- per month. Going by the decision of this Court in *United India Insurance Co. Ltd. vs. Kanwal Lal & Ors.* in MAC App. No. 385/2007 decided on 27.4.2012, the said assessment cannot be faulted as the view is supported by the decision of the Supreme Court in *V. Mekala vs. M. Malathi & Anr.* (2014) 11 SCC 178, a case of compensation for permanent disability suffered by a school going child aged about 16 years. The accident in that case had occurred on 11.4.2005. Having regard to the good career prospects reflected by the academic record adduced in the Court, the income was notionally assessed @ ₹10,000/- per month for the compensation to be computed. Some years down the line in relation to date of accident involved in the said case, the assessment of the income of the deceased child @ ₹10,800/- per month cannot be said to be way off the mark or unreasonable.

5. On the question of multiplier, however, there is substance in the contentions raised by the appellant. The father (the first respondent herein) while deposing as PW-1 gave his age as 49 years. Though the mother (the second respondent) submitted an affidavit sworn on 20.11.2012 indicating her age to be 40 years, the documents on record submitted with the detailed accident report (DAR) include copy of the ration card of the family (page 361 of the trial court record) reflecting the age of the second respondent (mother) as 44 years. If we take average, the age of the survivors/claimants would be 46 years. It is not disputed by the claimants that the multiplier has to be adopted, in the present case, on the basis of the age of the claimants rather than that of the deceased.

6. Having regard to the age of the claimants, per the ruling in *Sarla Verma & Ors. vs. DTC & Anr. (2009) 6 SCC 121* the multiplier of 13 would apply.

7. The learned Tribunal in computing the loss of dependency adopted the multiplicand as ₹5,400/- per month, having discounted the notional income by 50% on account of personal and living expenses. Thus, the loss of dependency on the basis of multiplier of 13 works out (₹5,400 X 12 X 13) to ₹ 8,42,400/-. Adding the non-pecuniary damages totalling ₹ 45,000/- (under the heads of loss of love & affection, funeral charges and loss of estate), award in which regard is not questioned, the total compensation payable is computed at ₹ 8,87,400/- rounded off to ₹ 8,88,000/- (Rupees Eight Lakhs Eighty Eight Thousand).

8. The appeal is, thus, allowed to the effect that the claimants are entitled to compensation in the sum of ₹ 8,88,000/- (Rupees Eight Lakhs

Eighty Eight Thousand) with interest as imposed in the impugned award.

9. On the application of the appellant (CM No. 3970/2013), it had been directed to deposit the awarded amount along with upto date interest with UCO Bank, Delhi High Court Branch, New Delhi, within four weeks of the order dated 6.3.2013. It was further directed that on such deposit being made, the bank would release 80% of the awarded amount in favour of the claimants keeping the balance in fixed deposit receipt in the account of the first respondent, no further amount to be released without permission of the Court. The tribunal is directed to recompute the amount payable to the claimants in terms of the award modified as above and issue requisite directions to the bank with regard to the balance 20% retained by it in fixed deposit receipt in terms of the directions of this Court by order dated 06.03.2013.

10. The balance payable, if any, to the claimants in terms of the modified award shall be directed by the Tribunal to be released through the bank within 30 days of the receipt of the copy of this judgment. Of course, for such purposes, the claimants will have to present themselves before the Tribunal for necessary proceedings to be taken out. The balance, if any, with corresponding interest shall be refunded to the appellant.

11. The statutory deposit, if made, shall also be refunded to the appellant.

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

JANUARY 22, 2016/nk