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

Date of Decision: 6th April, 2016

+ **MAC.APP. 138/2013**

DHANNO RANI

..... Appellant

Through: Mr. Anshuman Bal, Adv.

versus

NATIONAL INSURANCE CO. LTD. AND ORS. Respondent

Through: Mr. A K Soni, Adv.

+ **MAC.APP. 319/2013**

NATIONAL INSURANCE CO. LTD.

..... Appellant

Through: Mr. A K Soni, Adv.

versus

DHANNO RANI & ORS.

..... Respondent

Through: Mr. Anshuman Bal, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Uday Chand, aged 44 years, employed as security guard in government service, concededly on probation at the relevant point of time (he having been appointed on 07.10.2010), died as a result of injuries suffered in a motor vehicular accident that occurred at about 6.50 AM on 09.04.2011, statedly due to rash driving of motor vehicle described as

tempo bearing registration No. DL 1V A 7380 (the offending vehicle), which concededly was insured against third party risk with National Insurance Company Ltd. (the insurer), appellant in MAC.APP.No.319/2013. The local police (police station Hazrat Nizamuddin) had registered first information report (FIR) No.534/2011 and pursuant to the same submitted a detailed accident report (DAR), the motor accident claims tribunal (tribunal) treating it as an accident claim case under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) and holding inquiry. The tribunal eventually passed judgment on 15.11.2012 awarding compensation in the sum of Rs.14,99,160/- with interest at 9% per annum calculating it thus:

Loss of Dependency	Rs.14,69,160/-
Funeral Expenses	Rs. 10,000/-
Loss of Consortium	Rs. 10,000/-
Loss of Estate	Rs. 10,000/-
Total	Rs.14,99,160/-

2. The insurer, having admitted its liability to indemnify, was called upon to satisfy the award. It has come up in appeal (MAC.APP.No.319/2013) and presses it only to question the addition of future prospects to the extent of 40%, arguing that since the deceased was still on probation, the said element could not have been taken on board.

3. *Per contra*, Dhanno Rani (widow of the deceased) who was the claimant before the tribunal has come up with appeal (MAC.APP.No.138/2014) to seek enhancement of the compensation, her grievances being that the gross salary (Rs.13,500/- i.e. excluding washing allowance) should have been considered rather than the net salary proved

(Ex.PW2/A); that deduction on account of personal & living expenses to the tune of 50% was improper as the deceased was a married person; and, further, that the award under the non-pecuniary heads of damages is inadequate.

4. The submission of the claimant (appellant in MAC. APP. No. 138/2013) about the income of the deceased must be upheld. There is no reason why the deductions on account of contributions to provident fund, general insurance etc. had to be kept out of consideration. Thus, the loss of dependency has to be worked out on the basis of loss of income of Rs.13,500/-.

5. The argument of the insurer that future prospects could not have been added is without substance. The evidence brought before the tribunal, as duly noted in the impugned judgment, clearly shows that he was in regular employ of the Government and his income would have risen in the ordinary course over the future period of service. The mere fact that he was on probation does not mean the conclusion on this score can be otherwise. But there is indeed substance in the grievance that such addition could not have been to the tune of 40%. Since the deceased was 44 years, following the dictum in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the element of future prospects had to be restricted to 30% only.

6. The submission of the claimant that the deduction on account of personal & living expenses should have been to the extent of 1/3rd because the deceased was married is unmerited. The fact that the deceased had his spouse (the claimant) as the sole dependant itself shows that the approach

of the tribunal was correct. Thus, the deduction on account of personal & living expenses is made to the extent of 50% and consequently loss of monthly dependency comes to $(13,500 \div 2)$ Rs.6,750/-. Adding the element of future prospects, the loss of dependency comes to $(6,750 \times 130 \div 100 \times 12 \times 14)$ Rs.14,74,200/-, rounded off to Rs.14,75,000/-.

7. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, compensation in the sum of Rs.1 lakh on account of loss of consortium and Rs.25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case is computed as $(14,75,000 + 1,50,000)$ Rs.16,25,000/-.

8. The compensation is enhanced accordingly. Needless to add, it shall carry interest as levied by the tribunal.

9. In terms of order dated 10.04.2013, the petitioner had deposited the entire awarded amount with up-to-date interest, out of which 60% was allowed to be released to the claimant, the balance having been kept in fixed deposit receipt with UCO Bank, Delhi High Court branch for a period of six months with periodical renewal.

10. The Registrar General shall now take steps to calculate the amount payable to the claimant in terms of the above directions and release the same with proportionate interest in her favour. The insurer shall be required to pay more since the compensation has been enhanced. It shall do so within 30 days of today, whereupon the same shall be released to the claimant.

11. Statutory amount, if deposited, shall be refunded to the insurer.
12. The appeals are disposed of in above terms.

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

APRIL 06, 2016
VLD

