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

Date of Decision: 10th February, 2016

\+ **MAC.APP. 1098/2006**

SHASHI MAHAJAN & ANR ..... Appellant
Through Mr. Nitin Yadav, Adv.

versus

RAJESH KUMAR & ORS. ..... Respondent
Through Mr. A K Soni, Adv. for R-3

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. This appeal was preferred in 2006 under Section 173 of Motor Vehicles Act, 1988 (MV Act) to assail the judgment dated 31.08.2006 of Motor Accident Claims Tribunal (the Tribunal) whereby compensation in the sum of Rs.6,32,200/- was awarded with interest at 6% per annum in favour of the appellants, the interest being levied from the date of filing of the claim petition (06.01.2004) till realisation. The claim petition was preferred by the appellants being parents of Shavet Mahajan, a 24 years old youth, on account of his death in motor vehicular accident that occurred on 18.10.2003, caused by a motor vehicle which was admittedly insured with the third respondent (insurer) against third party risk covering the period in question. The driver and owner of the offending vehicle were impleaded in addition to the insurer as party respondents. The insurance company failed to file any written statement in spite of opportunity and, thus, its defence was struck off. The Tribunal awarded compensation holding the driver to be the principal tort feasor and the owner of the offending vehicle to be

vicariously liable. It, however, directed the insurance company to pay the compensation awarded in terms of its liability under the insurance contract.

2. The parents have felt aggrieved with the compensation awarded primarily on the ground that loss of dependency has not been properly worked out since the salary shown in the certificate (Ex.PW2/1) was not considered and only a part taken into account. The appellants also question the adoption of 11 as the multiplier and expressed grievance about the non-pecuniary damages.

3. Coming to the question of salary, the certificate brought on record through Ravi Mathur (PW2), a sales officer of Hongkong & Shanghai Banking Corporation (HSBC) shows that the deceased was employed as a sales officer with the said company. The salary certificate indicates the deceased was in the receipt of Rs.5,000/- per month as basic salary, the gross for the month of September, 2003 having been shown to be 14,640/-. The Tribunal took into account Rs.5,000/- as basic salary and added Rs.2,000/- as the house rent allowance payable to the deceased. It did not take into account Rs.5,640/- as another allowance shown in the salary certificate under the heading 'SP ALL CYC/WASH OTH PMT SPL.MED – PF CSD'. On being asked as to what is meant by the above description, and whether it is part of the regular earnings, the counsel for the appellant submitted that he is ignorant and, thus, cannot assist. The witness PW2 was not called upon to explain the emoluments to which the deceased was entitled in regular course of his employment. In these circumstances, it cannot be said that the amount of Rs.5,640/- was part of the regular emoluments accruing to the deceased. On being asked,

the counsel for the appellant also pleaded ignorance as to on what account ₹ 500/- per month was deducted.

4. While this Court is unable to agree to the contention that salary of the deceased should have been calculated on the basis of gross earnings shown in the salary certificate, there is substance in the submission that the prospects of future increase should have been factored in. The Tribunal seems to have fallen into error not only on that account but also by taking only 1/3rd towards personal and living expenses and also failing to take into account the requirement to deduct towards income tax liability. At the same time, this Court agrees that the multiplier of 11 adopted by the Tribunal on the basis of age of the father (49 years) was not correct. If the age of the mother (47 years) were to be taken into account, the loss of dependency have to be computed with the help of multiplier of 13 (*Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.,* (2009) 6 SCC 121 and *Reshma Kumari V. Madan Mohan* (2013) 9 SCC 65. Thus, the loss of dependency needs to be recomputed.

5. Taking into account the total earning of the deceased at Rs.7,000/- per month during relevant period, deduction towards income tax at the rate of 10% will have to be made for the income exceeding Rs.50,000/-. The net income of the deceased, thus, is calculated at Rs.80,600/- per annum.

6. Since the deceased was 24 years old at the time of death, and in regular employment, the element of prospects of increase in income in future to the extent of 50% needs to be added. Thus, the total annual income on which the loss of dependency is to be calculated comes to

Rs.1,20,900/-. From this, 50% is to be deducted towards personal and living expenses. Thus, the annual loss of dependency comes to Rs.60,450/-. On the multiplier of 13, the total loss of dependency comes to (60,450 x 13) Rs.7,85,850/- rounded off to Rs.7,86,000/-.

7. This court agrees with the submission that the non-pecuniary damages in the composite sum of Rs.25,000/- on account of funeral expenses and on account of loss of love and affection are on the lower side. Having regard to the date of accident, compensation in the sum of Rs.50,000/- towards loss of love and affection, Rs.15,000/- towards funeral expenses and Rs.10,000/- towards loss of estate need to be added. The total compensation payable, thus, comes to (7,86,000 + 75,000) Rs.8,61,000/- .

8. The compensation is enhanced accordingly to Rs.8,61,000/- (Rupees Eight Lakh Sixty One Thousand).

9. The awarded amount shall carry interest as levied by the Tribunal.

10. The Tribunal had apportioned the award equally amongst the two claimants. The said direction shall continue to operate and govern the rights of the claimants. The insurance company is directed to deposit the compensation in terms of enhanced award with the Tribunal within 30 days.

11. The appeal is disposed of in above terms.

12. Lower court record be returned.

R.K. GAUBA
(JUDGE)

FEBRUARY 10, 2016/VLD