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

Date of Decision: 22nd January, 2016

+ MAC.APP. 125/2006

SUMITA VERMA @ SEETA SONI & ORS Appellants

Through: Mr. Hameed S Shaikh, Adv.

versus

NATHU LAL & ORS. Respondents

Through: Mr. Pradeep Gaur, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. This appeal under Section 173 of Motor Vehicles Act, 1988 ("MV Act") preferred on 25.01.2006 has come up for final disposal after a decade, the entire blame for the lapse of time to be borne by the appellant (the claimants). The appellant was not diligent in prosecuting. A lot of time was wasted on service of the opposite parties. The appeal was suffered to be dismissed in default and for non-prosecution. It had to be restored by order dated 11.09.2015, inter alia, observing that the claimants would have to lose interest for the interregnum.

2. The appellants had filed the claim petition on 16.10.2002 seeking compensation under Sections 166 read with 140 of MV Act on account of death of Kailash Chand Verma as a result of injuries suffered by him

at about 2.30 PM in an accident that occurred at about 2.30 PM on 14.09.2002 in a collision between the motorcycle No.UP 97 0436 (“the motorcycle”) driven by him against a bus bearing No.UP 25 5051 (“the offending vehicle”) on public road from Banda to Bareilly in U.P. The petition was filed in Delhi since the claimants would ordinarily reside here. It was established during inquiry that the offending vehicle was driven at the time of accident by the first respondent and was owned by the second respondent. Concededly, it was insured with the third respondent for the period in question against third party risk.

3. It was proved at the trial, and there is no dispute about this fact, that the deceased born on 01.07.1956 was about 46 year old when he died in the accident. His salary was proved, on the basis of salary certificate (Ex.PW-2/1), to be in the gross sum of Rs.19,520/- from employment with Bank of Baroda. The salary certificate proved at the inquiry indicated deductions on account of Rs.9,218/- per month. From the document shown by the learned counsel at bar, it is noticed that the said deductions were on account of contribution to provident fund or recovery of various loans including in the nature of co-operative society, housing, miscellaneous loan etc. The deductions included tax deduction at source @ Rs.200/- for the relevant month.

4. The Tribunal, by the impugned judgment, proceeded to compute the loss of dependency after discounting the entire recovery of Rs.9,218/-, taking the monthly income at the net of Rs.10,302/-. It added the element of prospective increase in future and assumed the eventual loss of dependency at Rs.15,150/- and made a further deduction to the extent of 1/3rd for personal and living expenses, to reach the total loss of dependency at Rs.15,75,600/-. To this, non-

pecuniary damages on account of funeral expenses, loss of love and affection, pain and agony and consortium were added to the tune of Rs.30,000/- so as to award total compensation of Rs.16,05,600/- with interest at 6% per annum.

5. The grievance of the appellants is as to the calculations thus made towards the compensation. Having heard both sides at length, this Court agrees that the calculation of compensation by the Tribunal was wholly erroneous.

6. The calculation of the loss of dependency on the basis of net salary was not correct. It is now well settled that the loss of dependency is to be worked out on the basis of total income after discounting the element of income tax payable thereupon [*Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121].

7. The learned counsel on both sides agreed that having regard to the rate of income tax (20%) as leviable for the slab of income of the deceased for the corresponding financial year, the liability towards income tax may be worked out to the tune of Rs.30,000/- in approximate. The loss of dependency also required future prospects to the extent of 30% to be factored in. By these calculations, the total net income available to the deceased is worked out at Rs.2,04,240/- per annum, to which Rs.61,272/- requires to be added towards future increase, taking it to the total of Rs.2,65,512/- per annum.

8. Having regard to the fact that the dependents were five in number, the personal and living expenses would need to be discounted only to the tune of 1/4th [*Sarla Verma (supra)*]. Thus, the total loss of dependency may be calculated as (2,65,512 – 66,378) Rs.1,99,134/-, rounded off to Rs.2,00,000/-.

9. The Tribunal applied the correct multiplier of 13, in view of age (46 years) of the deceased [*Sarla Verma* (supra)]. Thus, the total loss of dependency may be calculated at Rs.26,00,000/-.

10. This Court also upholds the grievance as to the rates at which the non-pecuniary damages have been awarded. As noticed above, the tribunal has awarded only Rs.30,000/- under the other heads that includes loss of love, affection, consortium etc. In the case reported as *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54, where the fatal accident had occurred on 26.11.2007 a bench of three Hon'ble Judges of the Supreme Court granted Rs.1,00,000/- each on account of loss of consortium and loss of care and guidance for the minor children besides funeral expenses in the sum of Rs.25,000/-. Similar award needs to be made in the case at hand, in addition, of course, the loss of estate.

11. Thus, Rs.1,00,000/- each are awarded under the heads of loss of consortium for the wife, Rs.1,00,000/- for loss of love and affection for the rest of the family besides Rs.25,000/- each towards funeral expenses and loss of estate.

12. In above view, the total compensation payable to the claimants is calculated at Rs.28,50,000/-. The impugned judgment and award of the tribunal is modified accordingly.

13. The Tribunal had granted interest @ 6% per annum from the date of filing of the petition till payment. Having regard to the conduct of the claimants, there is no case made out for any increase in the rate of interest. The said rate shall apply from the date of filing of the petition till realisation. As observed in the order dated 11.09.2015, the claimants shall not be entitled to interest for the period of 500 days, which is the period of delay in proper prosecution of the appeal.

14. The appeal stands disposed of in above terms. The insurance company is directed to satisfy the award within 30 days of this order.

15. In case of default, the claimants shall be entitled to recover through execution before the tribunal.

R.K. GAUBA
(JUDGE)

JANUARY 22, 2016
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