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

Date of Decision: 02nd February, 2016

+ **MAC.APP. 208/2006**

REENA JAIN AND ORS. Appellants

Through: Mr. T. P. S. Kang, Adv.

versus

ORIENTAL INSURANCE COMPANY LTD Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Rajesh Kumar Jain son of Prem Nath Jain, aged 42 years, died as a result of injuries suffered in a motor vehicular accident that occurred at about 10:30 PM on 21.05.2000 in the area of Badhra Goner, Pilkhawa Ghaziabad (UP), within the jurisdiction of police station Pilakhawa (UP), on account of collision between a Tata Sumo bearing registration no. DL-9CA-2985 (Tata Sumo) driven by an employee of the registered owner and a truck bearing registration no. UGU-8830 (the truck). The claim petition under Section 166 read with Section 140 of Motor Vehicles Act, 1988 (the MV Act) was brought before the motor accident claims tribunal (the tribunal) on 26.08.2002, registered as petition no.214/2003 (2002) by his legal representatives namely Reena Jain (widow), Atul Jain and Varun Jain (sons), besides Prem Nath Jain & Sudershan Kumari Jain (the parents). The said claimants impleaded

as party respondents, Vinod Kumar (the owner of Tata Sumo), Oriental Insurance Company Ltd. (insurer of Tata Sumo), besides Nuruddin and Yunush Khan (the co-owners of the truck). The tribunal inquired into the claim petition and, by judgment dated 01.12.2005, awarded compensation in the sum of ₹5,65,010/- with interest @ 6% per annum from the date of filing of the petition (26.08.2002) till realization, excluding the period (08.07.2004 to 25.05.2005), during which, in the judgment of the tribunal, the claimants had not been diligent in prosecuting their case. The judgment directed the Oriental Insurance Company Ltd. (the first respondent herein) to pay compensation fastened on the owner of Tata Sumo (insured).

2. The appeal was presented in March, 2006 and has remained hanging fire now for almost 10 years. The solitary grievance pressed is with regard to multiplicand on the basis of which the loss of dependency was worked out by the tribunal for calculating the compensation payable. This particularly concerns the assumption of the tribunal that the deceased, a self-employed person, was in receipt of income in the sum of ₹50,000/- per month, on the basis of following reasoning:-

“As regards the earnings of the deceased, I may say that the evidence is ridiculously unbelievable. PW1 Smt. Reena Jain in her affidavit tendered as per Order XVIII Rule 4 (1) CPC Ex.PW1/X deposed that her husband was doing his business in partnership with his younger brother engaged in the business of import and export of glass beads and she placed on record income tax returns i.e., For No.2-D ‘Sara’ for the assessment year 2000-01 Ex.PW1/E, which would suggest that income from business was assessed at ₹1,71,923/-. She also placed on record return for the assessment year 2001-02 Ex.PW1/F, which suggests that income from business or profession was assessed to the tune of ₹44,522/-. In her cross-examination, she admitted that

the returns were filed by them after the death of her husband Rajesh Kumar Jain. In fact, I may indicate that the returns Ex.PW1/E and PW1/F do not bear any seal impression of the income tax department or any receipt number.

Further, the returns Ex.PW1/E and PW1/F are not accompanied with any statement as to Profit & Loss account or the balance sheet. No documentary evidence is placed on the record or shown to me that deceased was engaged in any import or export business. Even no documentary evidence is placed on record or shown to me that deceased was running any partnership business and if so, on what terms and conditions or from where and whether or not he was employing any persons. At the cost of repetition petitioner has not even given any evidence about the education qualification of her husband and no evidence is given about the status of the parties or their style of living.

In the said scenario, there are left open options available in the Court either to assess the annual income of the deceased as per the ratio of minimum wages provided for say a skilled workman or assume that deceased was a self-employed person and annual income be assumed @ ₹50,000/- having regard to the fact that business income was exempted up to such limit in the assessment year 2001-02. To my mind, the latter options seems more just and reasonable having regard to the demeanour of the wife and her father-in-law, who appeared in the Court during the proceedings. It appears that they relate to a good middle income group or class. However, in the face of the fact that no evidence is led about the business or the income from the partnership firm, I am not inclined to assume any future increase in the earnings. ”

3. During the pendency of the appeal at hand, upon their application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC), the appellants (claimants) were allowed to lead additional evidence. In terms of the liberty thus granted, the appellants examined Ms. Reena Jain (first appellant) as AW1 and Atul Jain (second respondent) as AW2. The said additional evidence has mainly proved on record, on the

strength of the affidavits (Mark-AW1/1 and AW2/1 respectively) of said witnesses, certain further documents gathered by the claimants from the income tax department, in support of the claim that the petitioner was earning from his business an income to the tune of Rs.5,61,295/- at the relevant point of time as pleaded in the claim petition. The documents proved were released by the income tax department to the claimants on the basis of their applications under the Right to Information Act, 2005.

4. It was pointed out by the learned counsel for the appellants, that the document (Mark-AW1/2) dated 15.12.2010 indicates that the deceased (assessee with GIR No.R-278) had returned an income of Rs.1,74,255/- for assessment year 2000-01. The learned counsel submitted that income tax computation form for the said assessment year (annexure P-6 to the affidavit of AW1) shows that income of Rs.1,74,255/- was only part of the total income, the assessee also having earned income from other sources to such extent that he was held liable to pay income tax in the sum of ₹80,990/-. It is noticed that income tax return for assessment year 2000-01 was submitted on 30.11.2000, as certified by the income tax department in its reply dated 18.11.2011 (Mark-AW1/3). Since the said income tax return was submitted after death had occurred on 21.05.2000, it cannot be a safe measure of the income actually accruing to the deceased prior to his death.

5. The documents relating to the income for the preceding assessment years i.e. 1997-98 and 1998-99, submitted on 28.11.1997 and 31.10.1998 respectively (Mark-AW1/3) and the return for assessment year 1999-2000 reveal more reliable information. It is noted that in the income tax return for assessment year 1997-98, (page 34 of

annexure P-6) income of the deceased had declared income of ₹ 55,610/-, for assessment year 1998-99 (page 31 of annexure P-6) he had declared income of ₹77,361/-, while the income returned for assessment year 1999-2000 (page 30 of annexure P-6) was ₹87,279/-. It is inconceivable that in the very next year his income would have increased to the extent shown in return for assessment year 2000-2001. The fact that the said inflated income was returned after the death tells its own story. In the face of the above facts and circumstances, this court is of the view that loss of dependency must be computed assuming that the income of the deceased at the time of accidental death was ₹ 87,279/- per annum, as declared for the assessment year 1999-2000.

6. The tribunal deducted one third towards personal and living expenses, and rightly so, following the dicta in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121. In this view, the loss of annual dependency would come to $(87279 \times 2/3)$ Rs.58,186/-. Having regard to the age of 42 years, the loss of dependency would need to be calculated with the help of multiplier of 14. Thus, the total loss of dependency comes to (58186×14) ₹ 8,14,604/-.

7. In view of the facts and circumstances of the case and the date of accident, non-pecuniary damages in the sum of ₹50,000/- on account of loss of consortium, ₹ 50,000/- on account of love & affection, ₹15,000/- on account of funeral expenses and ₹10,000/- on account of loss of estate need to be added. The total compensation, thus, works out to ₹ 9,39,604/-, rounded off to Rs.9,40,000/-.

8. The award of compensation is modified accordingly. It shall carry interest as directed by the tribunal in the impugned judgment.
9. The shares of the second to fifth appellants shall remain the same as fixed by the tribunal in the impugned judgment, whilst the entire balance shall be paid to the appellant (widow).
10. The second respondent (insurance company) is directed to comply with the award by depositing the same with upto date interest by way of appropriate instruments with the tribunal within 30 days of this order.
11. The appeal is disposed of in the above terms.
12. Trial court record be returned with a copy of this judgment.

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

FEBRUARY 02, 2016/ssc