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

Date of Decision: 08th March, 2016

+ **MAC.APP. 31/2006**

NEW INDIA ASSURANCE CO. LTD Appellant

Through: Mr. Pankaj Seth, Adv.

versus

ROSHNI DEVI & ORS Respondents

Through: Ms. Aruna Metha, Adv. for R-1 to 7.

+ **MAC.APP. 238-44/2006**

ROSHNI DEVI & ORS Appellants

Through: Ms. Aruna Metha, Adv.

versus

NARATA RAM & ORS Respondents

Through: Mr. Pankaj Seth, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Rajpal Singh (the deceased), working as a Constable in the Railway Protection Force (RPF) posted at Ambala, Haryana, suffered death due to injuries sustained in a motor vehicular accident that occurred at about 9 p.m. on 26.10.96, involving a truck bearing No. PNQ 3793 (the offending vehicle) admittedly insured against third party risk for the period in question

with New India Assurance Company Ltd. (insurer) which was impleaded as party respondent to the claim petition that came to be filed in this context before the motor accident claims tribunal (the tribunal) under Sections 140 & 166 of Motor Vehicles Act, 1988 (MV Act), it being registered as Suit No. 182/2005. It may be added that, as per the claim case submitted before the tribunal, the truck was driven by one Narata Ram (who was impleaded as first respondent before the tribunal). It was registered in the name of Amar Singh, who, it was proved on the basis of admissions, had sold it in favour of Gurmeet Singh (impleaded as respondent No.2-A before the tribunal) before the date of accident though it was mutated in the name of the latter subsequently.

2. The tribunal, upon inquiry, awarded compensation in the sum of Rs. 9,40,000/- in favour of the claimants with interest from the date of filing of the petition till realization. The insurance company had claimed that it was not liable since the driver Narata Ram was holding a document in the name of driving license (Ex.R3W1/5) which, upon verification, was found to be fake. The tribunal upheld the said contention and following the law laid down in *National Insurance Company V. Swaran Singh* (2004) 3 SCC 297 while directing the insurer to pay the amount of compensation awarded, granted recovery rights to it against respondent No.2(A) (Gurmeet Singh), the transferee and the then owner of the offending vehicle.

3. Both the claimants and the insurer have come up by way of separate appeals. The insurer contends that the loss of dependency has not been properly calculated since the multiplier applied was wrong. It also contends that the deduction towards personal & living expenses should have been to the extent of 1/4th, in view of the dictum in *Sarla Verma (Smt.) & Ors. v.*

Delhi Transport Corporation & Anr., (2009) 6 SCC 121. The claimants, on the other hand submit that future prospects should have been appropriately calculated and that the award under the non-pecuniary heads of damages namely loss of consortium, loss of love & affection and funeral rites are unduly low.

4. It is noted that claimants had proved salary certificate (Ex.PW1/1) of the deceased. The depositions of PW-1 and 2 also show that the deceased was earning total emoluments in the sum of Rs. 4,043/- from his employment as Constable in RPF. Given the nature of job in which he was engaged, the method of calculating the financial dependency as adopted by the tribunal seems to be improper. The tribunal also committed an error by increasing the amount of financial dependency to the extent of double to work out the loss of dependency on the multiplier of 18. The future prospects may be added only to the extent of 50% and the multiplier of 15 is the appropriate one in view of rule in *Sarla Verma* (supra).

5. Thus, the loss of dependency needs to be recomputed. Having regard to the fact that the deceased left behind 7 family members as dependants $1/5^{\text{th}}$ towards personal and living expenses has to be deducted. Factoring in the element of future prospects, the dependency is to be calculated on the basis of notional income at $(4,043 \times 150/100)$ Rs. 6,065/- per month. On deduction of $1/5^{\text{th}}$, the monthly loss of dependency is $(6,065 \times 4/5)$ Rs. 4,852/-. On the multiplier of 15, the total loss of dependency is $(4,852 \times 12 \times 15)$ Rs. 8,73,360/- rounded off to Rs. 8, 74,000/-.

6. In *Madhu Marwaha & Anr. Vs. Dal Chand & Anr.* in FAO 102/2001 decided by this Court on 1st February, 2016, non-pecuniary damages in the sum of Rs. 50,000/- each on account of loss of consortium and loss of love

& affection and Rs.10,000/- each on account of funeral expenses and loss of estate were awarded. A similar award in the present case deserves to be made. Therefore, the total compensation awardable in the case is calculated at (Rs.8,74,000 + 1,20,000) Rs. 9,93,360/- rounded off to Rs. 9,94,000/-. The compensation is enhanced accordingly.

7. The tribunal had apportioned the compensation awarded by it specifying the amounts to be given to the respective claimants. In these facts and circumstances, it is directed that the entire enhanced portion of compensation with proportionate interest shall be paid to the first claimant (widow).

8. By order dated 18.01.2006, in MAC Appeal No. 31/2006, the insurance company had been directed to deposit Rs. 8 lakhs with proportionate interest with the tribunal, was to be released to the claimants in terms of the impugned award. The insurance company is directed to deposit the balance, with the tribunal within 30 days of this judgment whereupon it shall be released in terms of the impugned judgment modified as above. Needless to add, the recovery rights granted to the insurer may be enforced by it by initiating appropriate proceedings before the tribunal.

9. Statutory deposit, if made, shall be refunded.

10. The appeals stand disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 08, 2016
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