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

Date of Decision: 09th March, 2016

\+ **MAC.APP.941/2011**

ORIENTAL INSURANCE CO. LTD. .... Appellant

Through: Mr. Tarkeshwar Nath & Mr. Onkar Nath, Advs.

versus

SARITA GUPTA & ORS. ..... Respondents

Through: Mr. Vijay Gupta & Mr. Chetan Swarup, Advs.

AND

\+ **MAC.APP.453/2012**

SARITA GUPTA & ORS ..... Appellant

Through: Mr. Vijay Gupta & Mr. Chetan Swarup, Advs.

versus

ORIENTAL INSURANCE CO. LTD ..... Respondents

Through: Mr. Tarkeshwar Nath & Mr. Onkar Nath, Advs

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Ankur Gupta, aged 24 years, then a bachelor who had attained the degree of Master of Computer Applications after graduation (B.Com) and

having undertaken the course of Intermediate CA, then serving with Sapient Corporation Pvt. Ltd. at a consolidated salary of Rs. 15,000/- per month died on account of injuries suffered in a motor vehicular accident that occurred on 08.08.2004 at about 04:30 am, involving a truck bearing No. HR 47L 9013 which was admittedly insured against third party risk with Oriental Insurance Company Ltd., the appellant (the insurer) in MAC Appeal No.941/2011.

2. The parents of the deceased (claimants) brought a claim petition under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) before the motor accident claims tribunal (the tribunal) on 03.02.2005 which was registered as MACT Case No. 14/2011. They (first and second respondents in MAC Appeal No. 941/2011 and the appellants in connected appeal MAC Appeal No. 453/2012) impleaded the insurer as party respondent in addition to the driver and owner of the truck. The insurer admitted the liability to indemnify under the third party insurance policy for the period in question, there being no case made out regarding breach of terms and conditions thereof.

3. The tribunal awarded compensation in the sum of Rs. 17,30,000/- with interest @ 7.5% per annum from the date of filing of the petition till realization. The compensation thus granted included Rs. 17,16,000/- towards loss of dependency and Rs.7,000/- each on account of loss of estate and funeral expenses. The loss of dependency was worked out by adopting the consolidated salary of Rs. 15,000/-, adding the element of future prospects of increase and applying the multiplier of 13, after deduction of 50% towards personal & living expenses.

4. The insurance company has come up in appeal questioning the above said computation raising objection to the element of future prospects having been added. *Per contra,* the claimants filed cross objections which has been registered as an independent appeal being MAC Appeal No. 453/2012, their contention mainly being that the evidence adduced during inquiry showed that the deceased had a brilliant academic record and though his initial engagement as an associate trainee by the aforementioned company was against a stipend of Rs.15,000/- per month on probation for a period of six months, given the extraordinary qualifications that he held, his career would have blossomed and that after his confirmation, on basis of his performance, he could have got a salary in the range of Rs. 6,04,400/- to Rs.6,75,000/- per annum. The contention of the claimants is that it is the said prospective salary which should have been considered for calculating the loss of dependency. Their further grievance is that the award under the non-pecuniary heads of damages is deficient, also as no award has been made on account of loss of love & affection.

5. Having heard arguments and gone through the tribunal's record, this Court does not find any substance in the contention of the insurance company against the element of future prospects being considered by the tribunal. At the same time, the contention of the claimants that the future expected income of the deceased should have been the basis of the calculation for loss of dependency cannot be accepted.

6. Though Praveen Kumar Gupta (PW-1), the father (claimant) of the deceased and Naveen Sanghvi (PW-3) an employee deputed by the employer company to prove the relevant facts concerning his engagement with the said entity, did depose about the possible rise in the career for the

deceased, the averments and statements to the effect that his income would have risen to the extent of ₹ 6,04,400/- to ₹ 6,75,000/- per annum is in the realm of speculation. The fact remains that at the time of his death his income was ₹15,000/- per month. Given the nature of employment which he had secured on the basis of his aforementioned educational qualifications, however, there can be no doubt about the fact that his career would have seen progressive rise. In these circumstances, the method of factoring in the element of future prospects as commended by the Supreme Court in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.,* (2009) 6 SCC 121, was correctly adopted by the tribunal to assess the notional income of the deceased to work out the loss of dependency at ₹ 11,000/- per month.

7. There is, however, substance in the grievance of the claimants that the award under the non-pecuniary heads of damages is highly deficient. Following the view taken by the Supreme Court in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, the award of ₹ 1 lakh on account of loss of love & affection and ₹25,000/- each towards loss of estate and funeral expenses deserves to be granted in place of meager total amount of ₹ 14,000/- towards loss of estate and funeral expenses.

8. Thus, the award is modified with an amount of ₹ 1,36,000/- having been added, raising the compensation to ₹ 18,66,000/-,

9. Indeed, there is no reason why the claimants should have been denied the rate of interest at 9% per annum as is ordinarily granted. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.] Accordingly, the rate of interest is increased to 9% per annum from the date of filing of the petition.

10. By order dated 24.10.2011 in MAC Appeal No. 941/2011, the insurer had been directed to deposit 50% of the awarded compensation with the Registrar General and the balance 50% with the tribunal. The amount deposited with the tribunal was directed to be released to the claimants.

11. It is directed that 50% of the awarded amount as deposited with the Registrar General shall also be released forthwith to the claimants in terms of the impugned judgment along with proportionate interest. The insurer shall be liable to pay further amount inasmuch the award has been increased. It is directed to deposit the balance of the amount, thus payable to the claimants with upto date interest by depositing it with the tribunal 30 days of this order whereupon it shall be released to the claimants.

12. The statutory deposit, if made by the insurer, shall be refunded.

13. Both these appeals stand disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 09, 2016
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