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

Date of Decision: 30.05.2016

+ **MAC.APP. 431/2014**

MANJU KUMARI & ORS

..... Appellants

Through: Mr. J.S. Kanwar, Advocate

versus

IRFAN & ORS

..... Respondents

Through: Mr. L.K. Tyagi, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Binay Kumar Singh, 52 years, a qualified engineer, earning his livelihood as a property valuer / insurance surveyor, died as a result of injuries suffered in a motor vehicular accident that occurred on 05.08.2012 involving negligent driving of a motor vehicle described as Tata 407, bearing registration no.DL-1LM-9960 (offending vehicle), admittedly insured against third party risk with the Oriental Insurance Company Ltd., third respondent (insurer), for the period in question. His dependent family members (appellants) instituted an accident claim case (petition no.185/2012) seeking compensation under Sections 166 and 140 of the

Motor Vehicles Act, 1988 (M.V. Act) impleading the driver, owner and insurer of the offending vehicle as respondents.

2. The Motor Accident Claims Tribunal (tribunal) held inquiry and, by judgment dated 25.01.2014, upheld the case that death had occurred due to negligent driving of the offending vehicle. The said finding has since attained finality as it was not challenged any further. By the impugned judgment, later corrected by order dated 10.03.2014, the tribunal awarded total compensation in the sum of Rs.21,16,000/- with interest at the rate of 9% p.a. in favour of the claimants directing the insurer to pay.

3. The claimants, by the appeal at hand, submitted that the award granted in their favour, by the aforementioned judgment, is inadequate, their prime contentions being that the element of future prospects has not been granted, the salary of Class I officer qualified engineer and surveyor was not considered and the award under the non-pecuniary heads of damages is low.

4. *Per contra*, the counsel for the insurer argued that in calculating the loss of dependency, the tribunal should have considered deduction on account of Income Tax liability.

5. Having heard both sides and having gone through the record, this court finds merit in the contentions of claimants as well as the insurer with regard to the element of future prospects on one hand and need for deduction on account of income tax liability on the other.

6. It is noted that the claimants had proved Income Tax Returns (ITRs) for the assessment year 2009-2010, 2010-2011, 2011-2012 (Ex. PW1/B collectively). The income declared for the assessment year 2009-2010 is

Rs.1,38,324/- which had been increased to Rs.2,56,500 in the next assessment year 2010-2011 and further increased to Rs.2,58,150/- in the assessment year 2011-2012. Though the claimant was 52 years old, post the age upto which future prospects were commended to be granted as per the dicta in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the element of irrefutable evidence of progressive rise in income in the case at hand cannot be ignored. In almost identical facts-situation in *United India Insurance Company Ltd. Vs. Kamla and Ors.*, MACA no.548/2013, decided on 28.03.2016, this court addressed similar issue as under :-

“..4. Undoubtedly, as per the dictum in Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121, the element of future prospects cannot be granted in cases where the deceased was over 50 years. But, pertinent to note, in K. R. Madhusudhan & Ors. vs. Administrative Officer & Anr., (2011) 4 SCC 689, the Supreme Court, noting that in Sarla Verma (supra) it had been accepted that “a departure can be made in rare and exceptional cases involving special circumstances”, observed as under:-

“We are of the opinion that the rule of thumb evolved in Sarla Verma is to be applied to those cases where there was no concrete evidence on record of definite rise in income due to future prospects. Obviously, the said rule was based on assumption and to avoid uncertainties and inconsistencies in the interpretation of different courts, and to overcome the same.”

5. The case at hand is one, where concrete and irrefutable evidence showing the definitive trend of progressive rise in the income in future has been adduced. Thus, per the dictum in Madhusudhan (supra), the element of future prospects has to be factored in.

6. While holding a divergent view, a bench of three Hon'ble judges of the Supreme Court in case report as *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54, albeit referring to the category of those who are "self employed or on fixed wages" considered it just and equitable to allow future prospects of increase to the extent of 15% to be factored in, even in cases where the victim was in the age group of 50-60 years. In the considered view of this court, the same approach can be adopted even in the category of cases governed by the dictum in *Madhusudhan* (supra).

7. Since the tribunal added element of 30% of increase in the income to work out the loss of dependency, it needs to be recomputed with the future prospects restricted to the extent of 15%..."

7. Following the view taken in *K.R.Madhusudhan* (supra) by the Supreme Court and in the case of *Kamla & Ors.* (supra) by this court, the element of future prospects of increase to the extent of 15% are added. At the same time, however, while computing the loss of dependency, deduction on account of Income Tax liability is made. Since the income declared for the assessment year 2011-2012 was Rs.2,58,150/-, having regard to the rates of the income tax applicable for the said period, deduction to the extent of Rs.7,000/- is made and the net income is arrived at (Rs.2,58,150/- (-) Rs.7,000/-) Rs.2,51,150/-. Adding the element of future prospects of increase to the extent of 15%, deducting 1/4th towards personal and living expenses and applying the multiplier of 11, the dependency loss is computed as (Rs.2,51,150 x 115/100 x 3/4 x 11) Rs.23,82,786/-, rounded off to Rs.23,83,000/-.

8. It is noted that the tribunal awarded Rs.1 Lakh each towards loss of love & affection and loss of consortium and Rs.25,000/- towards funeral expenses besides Rs.10,000/- on account of loss of estate. While the other non-pecuniary damages are in accord with the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, the loss of estate is increased to ₹25,000/-. Thus, the total compensation in the case is computed as (₹23,83,000/- + 2,50,000/-) ₹26,33,000/-. The award is enhanced accordingly. Needless to say, it shall carry interest as levied by the tribunal.

9. It is directed that the entire enhanced portion of the award with corresponding interest shall fall to the share of the first appellant (first claimant) widow Manju Kumari only. The insurance company is directed to satisfy the award by requisite deposit with the tribunal within 30 days of this judgment making it available to be released.

10. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 30, 2016

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