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

Date of Decision: 18th March, 2016

\+ **MAC.APP. 405/2007**

GAYATRI DEVI & ORS .... Appellants

Through: Mr. Manu Shahalia, Adv.

versus

ARSHAD ALI & ORS ..... Respondents

Through: Mr. Abhishek Kumar Gola, Adv. foor R-3.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Sharoo Ram, a Khalasi in Indian Railways, 52 years old at that time, in receipt of salary in the total sum of ₹3,614/- per month died as a result of injuries suffered in a motor vehicular accident that occurred at 12 noon on 30.06.1997 involving a scooter bearing No. DL 6SA 0492 (the offending vehicle) which was admittedly insured against third party risk with the third respondent (insurer). The dependant family members of Sharoo Ram preferred a claim petition under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) on 17.1.2005, which was registered as Suit No. 198/2006 (2005) in which besides the insurer, the driver and owner of the offending vehicle were also impleaded. The tribunal awarded compensation in the sum of ₹ 3,80,000/- and calculated it thus:-

Loss of dependency : ₹ 3,35,000/-

Loss of love and affection:		₹ 25,000/-
Funeral expenses	:	₹ 10,000/-
Loss to estate	:	₹ 10,000/-
Total compensation	**:**	**₹ 3,80,000/-**

2. The grievance of the appellants is that the subsequent increase in the pay on recommendation of the Central Pay Commissions, would have resulted in much more salary accruing to the deceased and, therefore, loss of dependancy needs to be reworked. The following observations of the Supreme Court in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 only need to be quoted to reject this contention:-

> *"45. The assumption of the appellants that the actual future pay revisions should be taken into account for the purpose of calculating the income is not sound. As against the contention of the appellants that if the deceased had been alive, he would have earned the benefit of revised pay scales, it is equally possible that if he had not died in the accident, he might have died on account of ill health or other accident, or lost the employment or met some other calamity or disadvantage. The imponderables in life are too many. Another significant aspect is the non-existence of such evidence at the time of accident.*
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> *46.In this case, the accident and death occurred in the year 1988. The award was made by the Tribunal in the year 1993. The High Court decided the appeal in 2007. The pendency of the claim proceedings and appeal for nearly two decades is a fortuitous circumstance and that will not entitle the appellants to rely upon the two pay revisions which took place in the course of the said two decades. If the*

claim petition filed in 1988 had been disposed of in the year 1988-89 itself and if the appeal had been decided by the High Court in the year 1989-90, then obviously the compensation would have been decided only with reference to the scale of pay applicable at the time of death and not with reference to any future revision in pay scales."

3. The claimants also submitted that the award under the non-pecuniary heads of damages is unduly low and that there is no award for loss of consortium. This Court in FAO 102/2001 *Madhu Marwaha & Anr. Vs. Dal Chand & Anr.,* decided on 1st February, 2016, where the fatal accident had occurred on 17.05.89, took the following view:-

"Having regard to the date of the accident and the facts and circumstances of this case noted above, non-pecuniary damages in the sum of ₹50,000/- on account of loss of consortium, ₹50,000/- on account of loss of love & affection, ₹10,000/- on account of funeral expenses and ₹10,000/- on account of loss of estate are hereby added".

4. In the present case, similar awards are made in lieu of what was granted by the tribunal. Thus, the total compensation in the case at hand comes to ₹ 4,55,000/-. Needless to add it shall carry interest as levied by the tribunal. It is further directed that the entire enhanced portion of the compensation with corresponding interest shall be payable to the first appellant (widow) only.

5. With above modification in the award, the appeal is disposed of with direction to the insurer to pay the same through the tribunal within 30 days.

R.K. GAUBA
(JUDGE)

MARCH 18, 2016/nk