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

Date of Decision: 29th March, 2016

\+ **MAC.APP. 426/2007**

S. K. TANEJA ..... Appellant

Through: Mr. Nitinjya Chaudhary, Adv. with Mr. Rajiv Trivedi, Adv.

versus

AMARJEET SINGH ..... Respondents

Through: None

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Anjana Taneja (born on 01.09.1954), working as a stenographer in Punjab National Bank at the then gross salary of Rs.14,314/- per month, died as a result of injuries suffered in a motor vehicular accident that occurred at about 6.15 PM on 30.05.2000 when the scooter bearing registration No.DAK 5568 (the scooter) on which she was riding pillion was involved in a collision with a blue line bus bearing registration No.DL 1PA 1974 (bus), admittedly insured against third party risk with the third respondent (insurer) for the period in question. Her husband and two children brought a claim petition under Sections 166 and 140 of Motor Vehicles Act, 1988 (M V Act) before the motor accidents claims tribunal (tribunal) on 23.10.2000 whereupon it was registered as suit No.411/2000. In the claim petition, the

insurer, driver and the registered owner of the bus were impleaded as party respondents, on the basis of pleadings that the accident had occurred due to rash/negligent driving of the bus which had hit the scooter from behind. This contention was upheld on the basis of evidence led.

2. By judgment dated 13.03.2007, the tribunal awarded compensation in the sum of Rs.15,15,000/- with interest at 7% per annum from the date of filing of the petition till realization in favour of the claimants (now appellants before this Court). Since the insurance policy cover was admitted, the insurer was directed to satisfy the award.

3. The compensation awarded by the tribunal included Rs.14,84,892/- calculated as loss of dependency to which Rs.25,000/- was added as composite damages on account of loss of love & affection and loss of consortium besides Rs.5,000/- towards funeral expenses.

4. Feeling aggrieved with the award granted, the claimants have come up in appeal seeking enhancement. It is pointed out by the claimants that the tribunal had excluded Rs. 65/- payable as conveyance allowance to the deceased while computing the income on basis of which loss of dependency had to be worked out. It is further pointed out that the tribunal applied the multiplier of 11, ignoring the fact that the deceased was 45 years and 9 months old at the time of her death and, thus, assuming her age as of 46, the multiplier of 13 would have been the appropriate basis of calculating the loss of dependency. The claimants further submitted that the non pecuniary damages and rate of interest are inadequate.

5. There is merit in the contention with regard to the deduction of conveyance allowance. The evidence on record shows that it was part of the terms and conditions of the regular service of the deceased with the bank

and, thus, the said amount cannot be excluded. After all, it would have resulted in corresponding savings to the deceased [see judgment dated 17.03.2016 in MAC. APP. No. 1210/2012 *Shakuntla Gautam v. Ravinder Kumar*]. Thus, the dependency has to be worked out on the basis of income of (13,749 + 65) ₹13,814 per month.

6. It is, however, noted that the tribunal added the future prospects to the extent of 50%. Given the age of the deceased, per the dictum in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.,* (2009) 6 SCC 121, the said element cannot be more than 30%. Thus, the notional income on which loss of dependency has to be calculated is computed as (13,814 x 130 ÷ 100) ₹17,958/-, rounded off to ₹17,960/-. Since the number of dependants is three, $1/3^{rd}$ is to be deducted towards personal and living expenses. Therefore, the loss of monthly dependency is worked out as (17,960 x 2 ÷ 3) ₹11,974/-.

7. There is merit in the contention of the claimants that the multiplier of 13 was the correct basis to calculate the loss of dependency, inasmuch as the deceased was approximately 46 years old [see judgment dated 18.02.2016 in MAC. APP. No. 636/2009 *Oriental Insurance Co. Ltd. v. Rekha Vashisht*]. In this view, the loss of dependency is calculated as (11,974 x 12 x 13) ₹18,67,944/- rounded off to ₹18,68,000/-.

8. With regard to grievance about inadequate award towards non-pecuniary heads, following the view taken by this Court in *Madhu Marwaha & Anr v. Dal Chand & Anr.* (FAO No.102/2001) decided on 01.02.2016, having regard to the date of accident (30.05.2000) and the facts and circumstances of this case as 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 total ₹1,20,000/- are hereby added. Thus, the total compensation in the case comes to (18,68,000 + 1,20,000) ₹19,88,000/-. The compensation is enhanced accordingly.

9. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.], the rate of interest is increased to 9% per annum from the date of filing of the petition till realization.

10. The tribunal had apportioned the award amongst the three claimants by specifying their shares. In the facts and circumstances, it is directed that the entire enhanced portion of the award with proportionate interest shall be payable to the first appellant (the husband) only. The insurer (third respondent) is directed to deposit the amount payable in terms of modification in the award as above with the tribunal within 30 days of this judgment whereupon the same shall be released.

11. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 29, 2016
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