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

Date of Decision: 09th May, 2016

\+ **MAC.APP. 497/2007**

SATWANTI AND ANR. ..... Appellant

Through Mr. Bijender Singh & Ms. Vidushi, Advs.

versus

THE ORIENTAL INSURANCE CO. LTD. AND ORS. ..... Respondents

Through None.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Gaurav, 19 years, a bachelor, suffered injuries in a motor vehicular accident that occurred on 11.04.2004 involving negligent driving of a motor vehicle described as Tata-407 bearing registration no.DL-1L-8160 (the offending vehicle) and died in the consequence. His parents (the appellants), then aged about 49 years, instituted an accident claim case (suit no. 195/2004) on 28.08.2004 impleading the three respondents herein as parties, they being the insurer, the driver and the owner respectively of the offending vehicle. The tribunal held inquiry and, on that basis, by judgment dated 08.01.2007, upheld their case that death had occurred on account of accident caused due to negligent driving by the driver of the offending

vehicle. This finding has attained finality as it was not challenged further. By the impugned judgment, the tribunal awarded compensation in the sum of ₹2,93,200/- with interest at the rate of 6% per annum from the date of filing of the petition till realization directing the insurer to pay. The amount thus awarded included ₹2,34,000/- calculated as loss of dependency on the assumed income of ₹3,000/- per month on which the multiplier of 13 was applied, besides ₹15,000/- each towards loss of love & affection and loss to estate and ₹5,000/- towards funeral expenses.

2. By appeal at hand, the claimants sought enhancement of the compensation and rate of interest.

3. It is argued by the learned counsel for the appellants that the deceased was a sportsperson with excellent track record. His participation and level of performance was elaborately set out in the pleadings of the petition. It is submitted that given such exceptional performance as shown by the deceased in the various sports events, the income higher than the meager amount of ₹3000/- should have been assessed. Reliance is placed on *Radhakrishna & Anr. vs. Gokul & Ors.*, (2013) 16 SCC 585.

4. This court has considered the submissions made. The case of *Radhakrishna* (supra) cannot be of much assistance as the deceased, a young person in the said case was pursuing professional course of engineering and the court was able to make some assessment as to his income on the basis of salary structure in the government employment. Unfortunately, in the cases of sportspersons, there is no enough data available for any accurate calculation or assumptions to be made as to the income which a sportsperson

would earn with such talent as has been claimed in the case at hand. At the same time, however, the case of the deceased could not have been treated as at par with that of an unskilled person. The skills and performance shown in the sports activities require to be factored in. It is noted that the deceased was a matriculate. In these circumstances, the income of the deceased is taken as ₹3311/- per month. After deducting 50% towards personal and living expenses, on the multiplier of 13, loss of dependency comes to (3311/2x12x13) ₹2,58,258/-, rounded off to ₹2,60,000/-.

5. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, the awards of ₹1,00,000/- towards loss of love & affection and ₹25,000/- each towards loss of estate and funeral expense are added. Adding the amount of ₹24,200/- awarded towards medical expenses, the total compensation is computed as (2,60,000+ 1,50,000+24,200) ₹4,34,200/- rounded off to ₹4,35,000/-.

6. 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.

7. The award is modified accordingly.

8. It is directed that the entire enhanced portion of the award including the effect of increase in the rate of interest shall be payable to the first appellant (the mother) alone.

9. The insurance company is directed to deposit the amount payable under the modified award with the tribunal within 30 days for it to be released to the claimant.

10. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 09, 2016
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