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

Date of Decision: 1st April, 2016

+ **MAC.APP. 434/2007**

KRISHNA DEVI & ANR.

..... Appellant

Through: None.

versus

PAWAN KUMAR & ANR.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 04.12.2004, at about 12.40 p.m. Sanjay Kumar, aged 28 years, a bachelor was driving motorcycle No. DL 8SM 9611(the motorcycle) with a family friend Jagdish (PW-3) riding on the pillion. The motorcycle had reached Miawali Nagar on Rohtak Road, where the deceased was in the process of overtaking a bus moving ahead. At that stage, the bus started changing lane towards right and in order to avoid collision the motorcyclist had to move away. At that point of time, the motor vehicle described as Tower Wagon No. DL 1LE 6988 (offending vehicle) was found stationary on the road without any safety precautions or caution signs having been employed. The motorcycle came to collide against the said offending vehicle resulting in both its riders falling down, Sanjay Kumar dying in the consequence.

2. The appellants (parents of the deceased) brought an accident claim case under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) before the motor accident claims tribunal (tribunal) on 22.07.2005 impleading first respondent herein as the person deployed on the offending vehicle as driver alleging that the accident had occurred due to his negligence. BSES Rajdhani Power Ltd., the registered owner of the offending vehicle (second respondent herein) was also impleaded as the party respondent on the averment that it was vicariously liable to compensate. It may be added here that M/s Reliance General Insurance Co. Ltd. was also shown in the array of parties before the tribunal but it was struck off by order dated 20.05.2006.

3. During inquiry before the tribunal, the respondents herein put up a contest alleging that the accident had occurred due to negligence on the part of the motorcyclist. The tribunal considered the evidence adduced which primarily included the deposition of pillion rider Jagdish (PW-3) on the one hand and Pawan Kumar, the driver of the offending vehicle (R2W1) on the other. The tribunal, by judgment dated 23.03.2007, concluded that both the motorcyclist and the driver of the offending vehicle were guilty of negligence apportioning the responsibility in ratio of 30 and 70 percent between the two of them.

4. The compensation payable in the case was assessed at Rs. 3,00,000/-. On account of contributory negligence to the extent of 30%, the balance 70% represented by the sum of Rs. 2,10,000/- was awarded in favour of the appellants with interest @ 8% per annum from the date of filing of the petition till realization. Both the respondents were directed to satisfy the award by requisite deposit, having been held jointly and severally liable.

5. By the appeal at hand, the appellants questioned the correctness of the conclusion reached by the tribunal about the motorcyclist also having been found guilty of contributory negligence. They further submit that the evidence about the private employment of the deceased at a salary of Rs. 8,200/- per month and income from agriculture and animal husbandry in the sum of Rs. 7,000/- per month was wrongly rejected. They contend that the tribunal while assuming the notional income at Rs. 3,450/- per month on the basis of minimum wages of a matriculate (as on the date of accident) had ignored the fact that the deceased had studied upto senior secondary level. It is further their contention that the compensation awarded is unduly low and the rate of interest (8% per annum) is inadequate.

6. The appeal was admitted by order dated 23.07.2007. Thereafter, the appellants seem to have lost interest. They would not appear when the matter is taken up for consideration.

7. On careful appraisal of the evidence brought on record, this Court finds no merit in the grievance as to the finding recorded by the tribunal about contributory negligence. The accident had occurred in broad daylight. The motorcyclist was in the process of overtaking a bus moving ahead. It is clear from the evidence on record, as duly noted by the tribunal, that while overtaking the bus, the deceased motorcyclist had not taken care to keep safe distance. This is the reason why when the motorcycle started steering right he had no way of escaping collision against the offending vehicle, which was stationary on the right side of the road. The admission of PW-3 during his cross-examination that the endeavour to take the moving bus was undertaken even while the motorcyclist rider had not checked the presence

of other vehicles in the way itself justifies the conclusions reached by the tribunal.

8. The evidence of mother, Krishna Devi (PW-1) and father Shiv Kumar (PW-2), about the income from private employer M/s A.K. Construction company on the strength of salary certificate (Ex.PW-1/A) and about agricultural income was rightly rejected by the tribunal in absence of proper proof. In these circumstances, there is no case made out for any increase in the award on account of loss of dependency.

9. However, following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, compensation in the sum of Rs. 1 lakh on account of loss of love & affection and Rs. 25,000/- each towards loss of estate and funeral expense are added. This would mean the compensation awarded by the tribunal deserves to be increased by Rs. 1,20,000/-. However, in the face of finding that the deceased himself was guilty of contributory negligence to the extent of 30%, the increase in the compensation in favour of the appellants(claimants) would be in the sum of Rs. 84,000/-.

10. 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.

11. The tribunal had apportioned Rs. 1,10,000/- to the first appellant and the balance in favour of the second appellant. Having regard to the facts and circumstances of the case, it is directed that the entire enhanced portion of

the compensation along with the effect of increase in the rate of interest shall be payable to the first appellant (mother Krishna Devi) alone.

12. The first and second respondents shall be liable jointly and severally to pay the increased compensation amount payable on account of increase in the rate of interest, by depositing it with the tribunal within 30 days of this judgment. In case of default, the appellant shall be entitled to take out the execution of the award.

13. The appeal is disposed of in above terms.

APRIL 01, 2016

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**R.K. GAUBA
(JUDGE)**