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

Date of Decision: 5th April, 2016

+ **MAC.APP. 437/2007 & CM No.12948/2009**

NATIONAL INSURANCE CO.

..... Appellant

Through: Mr. Pradeep Gaur, Adv.

versus

MAYA DEVI AND ORS.

..... Respondent

Through: Mr. O P Mainnie, Adv.

+ **MAC.APP. 285/2016**

MAYA DEVI AND ORS.

..... Appellant

Through: Mr. O P Mainnie, Adv.

versus

NATIONAL INSURANCE CO.

..... Respondent

Through: Mr. Pradeep Gaur, Adv

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Balraj Singh, 44 years old, working as fitter in Delhi Transport Corporation (DTC) suffered injuries in a motor vehicular accident that occurred on 17.09.2000 and died as a result. The accident had involved

motor vehicle described as one bearing registration no. HR 46A 3969 (the offending vehicle) admittedly insured against third party risk with National Insurance Co. Ltd. (the insurer), it having come up in appeal (MAC.APP.No.437/2007). Seven members of the dependant family (appellants in cross-appeal MAC.APP.No.285/2016) filed an accident claim case under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) on 04.11.2000 before the motor accident claims tribunal (tribunal), whereupon it was registered as suit No.886/2006 (old No. 430/2000). In the claim case, besides the driver and owner of the offending vehicle, the insurer (appellant in MAC.APP.No.437/2007) were impleaded as parties. The tribunal upheld the case of the claimants that the death had occurred due to negligent driving of the offending vehicle and assessed the compensation in the sum of Rs.11,53,200/- awarding it with interest at 7% per annum from the date of filing of the petition till realization. The said amount included Rs.11,23,200/- towards loss of dependency, calculated on the basis of income of the deceased at Rs.7,800/- on which the component of future prospects of increase to the extent of 50% was added and the multiplier of 12 was applied. The tribunal also added Rs.20,000/- towards loss of consortium and Rs.10,000/- towards funeral expenses.

2. The insurer by its appeal (MAC.APP.437/2007) has argued that the addition of future prospects to the extent of 50% was incorrect. Since the deceased was 44 years old, the said addition could not have been made beyond 30%. *Per contra*, the claimants, by their appeal (MAC.APP.No.285/2016), have submitted that the income was wrongly taken as Rs.7,800/- per month. Since last salary drawn was proved

formally (vide Ex.PW4/A) to the tune of Rs.8,100/- (i.e. excluding washing allowance of Rs.15/- per month), it could not have been ignored. While conceding that the future prospects will have to be restricted to 30%, the claimants submit that multiplier of 14 should have been applied in view of the dictum in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.,* (2009) 6 SCC 121.

3. The claimants further submit that since they were seven in number the deduction towards personal & living expenses should be to the tune of 1/5th rather than 1/3rd as done by the tribunal. They also rely on *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, to claim increase in awards under the non-pecuniary heads of loss of love & affection and loss of consortium. They further contend that the non-pecuniary damages have not been properly compensated and the rate of interest applied is low.

4. Having heard both sides and gone through the tribunal's record, it is found that the tribunal has fallen into a number of errors in computing the compensation. Indeed, the last salary shown by the document (Ex.PW4/A) indicates the income should have been taken to the tune of Rs.8110/-. Since the number of dependants are seven, the loss of dependency comes to (8,110 x 4 ÷ 5) Rs.6488/-. 30% towards future prospects has to be added and, thus, the income on which the dependency loss is to be worked out comes to (6,488 x 130 ÷ 100) Rs.8435/-. The total loss of dependency on the multiplier of 14 comes to (8,435 x 12 x 14) Rs.14,17,080/-, rounded off to Rs.14,18,000/-.

5. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, compensation in the sum of Rs.1 lakh each on account of loss of love & affection and loss of consortium and Rs.25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case is computed as (14,18,000 + 2,50,000) Rs.16,68,000/-.

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 as above.

8. The tribunal had apportioned 65% of the awarded compensation in favour of the first claimant (widow), 10% in favour of the seventh claimant (the mother) and the balance in the ratio of 5% each in favour of others. It was brought to the notice of the Court on 13.03.2009 (during hearing on MAC.APP.No.437/2007) that the seventh claimant (mother) had died on 31.12.2008. Her share was distributed equally amongst the other claimants by order dated 13.03.2009.

9. The award modified as above shall stand distributed in the ratio determined by the said order dated 13.03.2009.

10. The amount of compensation as granted by the tribunal was deposited with the tribunal along with interest accrued thereupon in terms of order dated 13.03.2009 and the said deposit was allowed to be released

to the claimants. The insurance company shall now deposit the balance of its liability with the tribunal within 30 days of this judgment.

11. Statutory deposit, if made, shall be refunded.

12. The appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 05, 2016
VLD