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

Date of Decision: 29th April, 2016

\+ **MAC.APP. 37/2013**

UNITED INDIA INSURANCE CO LTD ..... Appellant

Through: Mr. P. Acharya, Adv. for Mr. Sameer Nandwani, Adv.

versus

POONAM SARIN AND ORS ..... Respondents

Through: Mr. O. P. Mannie, Adv. for R-1 to 4. Mr. Amit Kumar Pandey, Adv. for respondent/owner.

AND

\+ **MAC.APP. 573/2013**

SMT POONAM SARIN & ORS ..... Appellants

Through: Mr. O. P. Mannie, Adv.

versus

UNITED INDIA INSURANCE CO LTD ..... Respondents

Through: Mr. P. Acharya, Adv. for Mr. Sameer Nandwani, Adv.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Aman Sarin, found by the motor accident claims tribunal (the tribunal) to be 30 years old at that point of time, employed as service

engineer with M/s Hitachi Home & Life Solutions (India) Ltd., died as a result of injuries suffered in a motor vehicular accident that occurred on 05.06.2010, involving negligent driving of Maruti van bearing registration no.DL-9CJ-5191 (the offending vehicle), which was admittedly insured against third party risk with United India Insurance Company Ltd. (appellant in MAC appeal no.37/2013).

2. The dependant family members of Aman Sarin (appellants in MAC Appeal no.573/2013) instituted an accident claim case (petition no.445/2010) on 11.08.2010 seeking compensation under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act), impleading besides United India Insurance Company Limited (the insurer), the driver and owner respectively of the offending vehicle. The tribunal held inquiry and, by judgment dated 05.11.2012, upheld the case of the negligent driving and awarded compensation in the sum of ₹27,98,016/- with interest at the rate of seven & half percent (7.5%) per annum from the filing of the petition till realization in favour of the claimants, calling upon the insurer to satisfy the award. The said amount of compensation includes ₹3,06,440/- towards medical expenditure, ₹10,000/- each towards loss of consortium and loss to estate and funeral expenses, besides ₹25,000/- on account of loss of love & affection and ₹24,36,576/- towards loss of dependency.

3. In calculating the loss of dependency, the tribunal accepted the evidence of Mohit Sharma (PW3), Service Incharge, Hitachi Home & Solution India Ltd., based, *inter-alia*, on salary certificate (Ex.PW1/3) to conclude that the deceased was earning ₹11,944/- per month as salary, on which the element of 50% increase future prospects was added.

4. By appeal at hand, the insurer questions the computation of compensation on the ground that addition of future prospects was erroneous for the reason the evidence of PW3 would show that the deceased was not in regular employ.

5. *Per contra*, the claimants argue that deduction on account of personal and living expenses to the extent of one third was wrong because the number of dependants is four and, therefore, it should have been restricted to one fourth. The claimants also urge by their appeal that the non-pecuniary heads and rate of interest are inadequate.

6. Having heard both sides and perused the record, this court finds no substance in the appeal of the insurer. The evidence of PW3 clearly shows that the deceased was a regular employee and would have earned progressive increase in income in future. In view of irrefutable evidence to this effect, the addition of future prospects cannot be grudged [see judgment dated 28.03.2016 in MAC.APP. 548/2013 *United India Insurance Company Limited v. Kamla & Ors.*].

7. There is merit in the grievance about personal and living expenses. Since the net income calculated was ₹17,916/-, the monthly loss of dependency would be (17916x3/4) ₹13,437/-. On the multiplier of 17 which was correctly applied, the total loss of dependency is calculated as (13437x12x17) ₹27,41,148/-.

8. Following the view taken by this court in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, the non-pecuniary heads of damages are increased to

₹1,00,000/- each towards loss of consortium and loss of love & affection and ₹25,000/- each towards loss of estate and funeral expenses. Adding the award towards medical expenditure, the total compensation in the case comes to (27,41,148+3,06,440+2,50,000) ₹32,97,588/-, rounded off to ₹33,00,000/-.

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. By order dated 14.01.2013 (in MAC appeal no.37/2013), the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with UCO Bank, Delhi High Court branch, New Delhi and from out of such deposit 50% was allowed to be released, balance retained in form of fixed deposit receipt. The Registrar General shall take necessary steps to get the balance released in favour of the claimants from such deposit. The insurance company is directed to deposit the remainder of its liability in terms of the award modified as above with the tribunal within 30 days of this judgment, upon which the same shall also be released accordingly.

11. The statutory deposit, if made by the insurer, shall be refunded.

12. The appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 29, 2016/ssc