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

Date of Decision: 09th February, 2016

\+ **MAC.APP. 776/2012**

BEENA DEVI & ORS ..... Appellants

Through: Mr. Navneet Goyal, Adv.

versus

RAVINDRA SINGH & ORS ..... Respondents

Through: Mr. Shoumik Mazumdar, Adv.

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

<u>JUDGMENT</u>

<u>R.K.GAUBA, J (ORAL):</u>

1. The appellants were the claimants before the motor accident claims tribunal ("the tribunal") in petition presented under Sections 166 and 140 of Motor Vehicles Act, 1988 (the MV Act) submitted on 03.04.2012, registered as suit no.316/2011 claiming compensation on account of death of Vijay Shankar on 24.04.2009 on account of injuries suffered in motor vehicular accident that occurred on 11.04.2009 involving Quails car bearing registration no.DL-6CG-5528 (the offending vehicle). In the claim petition, the first respondent was impleaded as the driver of the offending vehicle on account of whose negligent driving the accident statedly occurred. The second respondent admittedly was the registered owner of the offending vehicle and it was concededly insured against third party risk with third respondent herein,

both of which were shown in the array of parties. The insurance company, however, took the plea that there was breach of terms of the policy and that first respondent was not holding a valid driving license. On the basis of evidence led, this contention was upheld and it was held that the driving license relied upon by the respondent nos.1 & 2 was a fake document. Accepting the evidence on the question of involvement and negligence, first and second respondent were held jointly and severally liable. The tribunal awarded compensation in the sum of ₹4,75,520/- with interest @ 7.5% from the date of filing of petition till realization. In arriving at the said computation it assessed the loss of dependency at ₹4,55,520/- on the basis of minimum wages payable to a matriculate at ₹4382/- per month at the time of accident. Non-pecuniary damages in the sum of ₹5,000/- each were added under the heads of funeral expenses, loss of consortium, loss of estate and loss of love and affection.

2. The appeal questions the computation on the ground that the evidence led through R. K. Sharma (PW3) Accounts Manager in M/s Kalpana Trading Company was wrongly disbelieved and, thus, loss of dependency needs to be recalculated. The appellants also contend that the non-pecuniary damages as awarded are inadequate. The appellants further argue that even if the driving license was found to be forged, the insurance company should have been held liable to pay the compensation though it may have been granted recovery rights against the insurer.

3. Inspite of service, first and second respondent have failed to appear to contest the appeal. It is noted that after filing the written

statement before the tribunal, the said parties had suffered the proceedings before that forum *exparte*.

4. Having heard the learned counsel for the appellants, this court finds no substance in the claim as regards the salary of the deceased on the basis of evidence of PW3. The tribunal rejected the said evidence, for justifiable reasons, inasmuch as PW3 was unable to confirm the status of the engagement of the deceased with the said company, the appointment letter (Ex.PW3/1), having been authenticated after the death for no plausible reason. Service records of the deceased with the employer was also not adduced.

5. In above facts and circumstances, no error is found in the calculation of loss of dependency. There is, however, substance in the contention that non-pecuniary damages as awarded by the tribunal are too meagre. Having regard to the view taken in *Rajesh & Ors. vs. Rajbir & Ors.*, (2013) 9 SCC 54, the award on account of loss of consortium and loss of love and affection is enhanced to ₹1,00,000/- each. Similarly, the award on account of funeral expenses and loss of estate is increased to ₹25,000/- and ₹10,000/- respectively.

6. In this view, the compensation is bound to be enhanced to ₹6,70,520/-, rounded off to ₹6,71,000/-. Ordered accordingly.

7. The enhanced compensation shall also carry interest as levied by the tribunal in the impugned judgment.

8. The tribunal returned a clear finding that the driving license relied upon by the respondent nos.1 & 2 was a forged document. In these circumstances, there is indeed a breach of terms of the policy. However,

this should not have come in the way of the insurance company being directed to discharge its liability towards the claimants in terms of the insurance policy covering third party risk. The proper course for tribunal would have been to direct the insurance company to pay the compensation and at the same time granting right to recover it from the person insured [*National Insurance Company V. Swaran Singh* (2004) 3 SCC 297].

9. The direction in the impugned judgment is modified to the effect that the insurance company shall be obliged to pay the compensation amount, as enhanced with up-to-date interest, to the claimants within 30 days of today by depositing it with the tribunal. After the said deposit, the insurance company shall be entitled to take out appropriate proceedings to recover the said amount from the second respondent.

10. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

FEBRUARY 09, 2016/ssc