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

Date of Decision: 28th March, 2016

+ **MAC.APP. 323/2009**

GURINDER SINGH & ANR.

..... Appellant

Through Mr. J C Mahindroo, Adv.

versus

ASHOK KUMAR & ORS.

..... Respondent

Through Mr. Manoj R Sinha, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Banmeet Singh, a bachelor, died as a result of injuries suffered in motor vehicular accident that occurred on 12.08.2005 involving a motorcycle bearing registration No.DL 45Z 9923 (the motorcycle) on which he was riding pillion and a bus bearing registration No.DL 1P 8346 (the offending vehicle). After the accident, he was rushed to hospital where he remained in critical state till he succumbed to injuries on 06.09.2005. His parents (appellants) brought an accident claim case under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) (petition No.191/2006) on 27.09.2005 impleading the driver, owner and insurer of the offending vehicle as party respondents. The tribunal by judgment dated 07.03.2009 awarded compensation in the sum of ₹11,05,695/- with interest at 7% per

annum from the date of filing of the petition till realization apportioning it in equal shares amongst the father and mother. While directing the insurer (the third respondent herein) to pay and satisfy the award, the interim compensation of ₹50,000/- paid under Section 140 of MV Act was allowed to be adjusted.

2. The claimant's parents brought this appeal seeking enhancement of the compensation. During the pendency of the appeal the first appellant/claimant (father) died and his widow (the second appellant) and his daughter were substituted in his place.

3. The tribunal calculated compensation thus :

1. Medical treatment	Rs 4,62,805/-
2. Loss of dependency	Rs 4,87,890/-
3. Funeral expenses	Rs 10,000/-
4. For pain and sufferings	Rs 50,000/-
5. Loss of love and affection	Rs 75,000/-
6. Miscellaneous expenses	<u>Rs 20,000/-</u>
Total compensation	Rs 11,05,695/-
Less Interim Compensation	<u>Rs 50,000/-</u>
TOTAL	<u>Rs 10,55,695/-</u>

4. The grievance of the claimants in appeal essentially is that during the treatment of Banmeet Singh in hospital he was kept on ventilator which resulted in expenditure of ₹1 lakh. The tribunal noted in the judgment this submission and claim but kept the award on this account only at ₹20,000/- on the ground the medical bills only to the tune of ₹4,42,805/- had been submitted. It is well known that proof of each and every head of expenditure incurred during treatment undertaken in emergency situation may not always be available. The evidence led about the ventilator charges

having been paid in the sum of ₹1 lakh has gone unrebutted. Therefore, there was no basis for the tribunal to have assessed the said expenditure vaguely in the sum of ₹20,000/-. In this view, the medical treatment expenditure have to be compensated more by adding the sum of ₹80,000/-.

5. The submission of the insurance company that the award of ₹50,000/- towards pain and suffering was impermissible is correct. The compensation under the said non-pecuniary head of damages is personal to the victim and is not available to the dependent family members after his demise. Thus, the direction to that extent given by the tribunal will have to be set aside.

6. There is substance in the grievance about inadequacy of the awards under the heads of funeral expenses and loss of love & affection. It is noted that there is no award given under the loss to estate. 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 ₹1 lakh on account of love & affection and ₹25,000/- each towards loss of estate and funeral expense are added. The grant of ₹20,000/- under the head of miscellaneous expenses as given by the tribunal is maintained. Thus, the total compensation payable in the case comes to (5,42,805 + 4,87,890 + 1,00,000 + 25,000 + 25,000 + 20,000) ₹12,00,695/- rounded off to ₹-12,01,000/-.

7. 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.

8. Since the claimant father has died, in absence of any proof with regard to dependency of the daughter who also has been substituted in his place, it is directed that the entire compensation awarded, as modified above, shall be payable to the second appellant (claimant mother) only.

9. The learned counsel for the claimants submits that the amount awarded by the tribunal has already been received. The insurance company shall now be obliged to deposit the balance in terms of the modified award with the tribunal within 30 days of today whereupon it shall be released to the claimant as per above directions.

10. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 28, 2016
VLD

