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

Date of Decision: 10th May, 2016

+ **MAC.APP. 712/2013 with CM nos.12021/2013, 12024/2013**

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Through: Mr. Pankaj Seth, Adv.

versus

SHRI UDAY SINGH AND ORS ..... Respondents

Through: Mr. Alok Sharma, Adv. for R-1 & 2.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Radhey Shyam, aged 22 years, died as a result of injuries suffered in a motor vehicular accident that occurred on 02.11.2008 involving negligent driving of bus bearing registration no.DL-1PA-8070 (the offending vehicle) admittedly insured against third party risk with the appellant/insurance company (the insurer) for the period in question. His parents, aged 52 and 47 years (first and second respondents/the claimants respectively), instituted an accident claim case (MACP no.34/2008) on 06.12.2008 seeking compensation. The tribunal held inquiry and, by judgment dated 22.02.2011, upheld the case that the death had occurred due to negligent driving of the offending vehicle. This finding has attained finality as it was not challenged. The insurer which was impleaded as a party respondent was

burdened with the liability to pay the compensation by the said judgment assessed in the sum of ₹3,04,852/- with interest at the rate of 7.5% per annum. It appears that in the said judgment particulars of the case were wrongly mentioned. Pointing this out and also submitting that the multiplier had been wrongly adopted according to the age of the claimants and certain amount under non-pecuniary heads of damages had not been included in the final computation, an application for review was filed which was allowed by the tribunal by order dated 20.07.2011 raising the award to ₹4,40,372/- with interest.

2. By appeal at hand, the insurer challenged the judgment and the order mentioned above submitting that the multiplier should have been adopted as per the age of the claimants.

3. Having regard to the settled law on this subject, the multiplier of 13 had been correctly chosen by the tribunal in the judgment dated 22.02.2011 [*G.M. Kerela SRTC vs Susamma Thomas* (1994) 2 SCC 176 and *U.P.S.R.T.C. vs Trilok Chandra* (1996) 4 SCC 362). At the same time, it is noted that the awards under non-pecuniary heads of damages and rate of interest levied are inadequate. Thus, compensation is recalculated.

4. On the notional income of ₹1842/- calculated after deducting personal and living expenses, and on the multiplier of 13, the loss of dependency comes to (1842x12x13) ₹2,87,352/-, rounded off to ₹2,90,000/-.

5. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, the award in the sum of ₹1,00,000/- on account of loss of love & affection

and ₹25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case is computed as (2,90,000+ 1,50,000) ₹4,40,000/-.

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. It was noted in the order dated 14.08.2013 that the entire amount awarded by the judgment dated 22.02.2011 had been deposited with the tribunal. The enforcement of the award under the review order, however, was stayed. The insurance company shall now deposit the balance of its liability in terms of the modified award within 30 days with the tribunal whereupon it shall be released to the claimant.

8. The appeal (with applications) is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 10, 2016
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