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

Date of Decision: 27.05.2016

\+ **MAC.APP. 620/2014**

SMT. KRISHNA DEVI & ORS

..... Appellant

Through Ms. Manjeet Chawla, Adv.

versus

SHRI TEJ PAL & ORS

..... Respondent

Through Mr. Mohan Babu Aggarwal, Adv. for R-3

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Baljit Singh, born on 08.08.1956, had joined as constable in Delhi Police on 10.12.1976. He took voluntary retirement from the police service on 01.04.2006 and was granted pension at ₹3,294/- per month. On 26.07.2006, he met with an accident involving negligent driving of DL IPB 4306 (the offending vehicle) and suffered injuries. He remained hospitalized for treatment but unfortunately died on 18.08.2006. The accident claim case (No.755/09), instituted on 21.02.2007 by the first to third respondents (claimants), dependant family members of deceased Baljit Singh, sought compensation under Sections 166 & 140 of Motor Vehicles Act, 1988 (MV Act). In the said proceedings, the driver, owner and insurer

of the offending vehicle were impleaded as party respondents with the averment that the accident had occurred due to negligent driving of the said vehicle. The tribunal held inquiry and, by judgment dated 15.03.2014, upheld the said case holding the driver of the offending vehicle, he being the principal tort-feasor and the owner on account of vicarious responsibility, liable to pay compensation. It assessed the compensation in the sum of ₹5,07,956/-, calculating it thus :

1.	Loss of dependency	Rs. 3,07,956/-
2.	Medical expenses.	Rs. 1,30,000/-
3.	Loss of consortium	Rs. 10,000/-
4.	Loss of love and affection	Rs. 25,000/-
5.	Funeral &miscellaneous expenses	Rs. 25,000/-
6.	Loss of estate	Rs. 10,000/-

Total awarded compensation		Rs. 5,07,956/-
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2. The insurer (third respondent) was directed to pay the abovesaid amount, after adjusting the interim award of ₹50,000/- with interest at 7.5% per annum to the claimants.

3. The claimants have come up in appeal questioning the calculation of loss of dependency. They also submit that the non-pecuniary heads of damages awarded and the rate of interest levied are inadequate.

4. Having heard the counsel for the claimants, and the insurer, who only have appeared at the final hearing, this Court finds substance in the appeal. The deceased had undoubtedly taken voluntary retirement but would assumably have been still working for gain. Though his pension was ₹3,294/- per month, the minimum wages of 3,464/- per month as calculated

by the tribunal would be over and above the monthly pension, which he would be bringing home. After the death, it is conceded by the counsel for the claimants, the widow started getting family pension which, under the normal rules, would be 50% of the pension of the deceased. Since the tribunal assumed the notional income at ₹3,500/-, 50% of the pension has to be added to work out the loss of dependency. Therefore, the income is calculated as (3,294 ÷ 2 + 3,500) ₹5,174/-.

5. Given the age at which the death had occurred, it being a few days before he would have turned 50, the multiplier of 11 will have to be applied. For the same reasons, the element of 50% towards future prospects has also to be added. Thus, the notional income for assessing dependency loss is calculated as (5,147 x 130 ÷ 100) ₹6,691/-. Applying the multiplier of 13, after deduction of 1/3rd towards personal & living expenses, compensation towards loss of dependency comes to (6,691 x 2 ÷ 3 x 12 x 13) ₹6,95,864/- rounded off to ₹6,96,000/-.

6. 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 ₹1 lakh each on account of loss of love & affection and loss of consortium and ₹25,000/- each towards loss of estate and funeral expense are added. Including the award of ₹1,30,000/- towards medical expenses, the total compensation payable in the case is computed as (6,96,000 + 2,50,000 + 1,30,000) ₹10,76,000/-.

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. Needless to add, the amount paid in terms of the interim award shall be suitably refunded.

8. The award is modified accordingly.

9. The insurer is directed to pay the enhanced award by requisite deposit with the tribunal within 30 days of this judgment making it available to be released to the claimants.

10. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 27, 2016
VLD