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

Date of Decision: 19.05.2016

+ **MAC.APP. 695/2013**

NEW INDIA ASSURANCE CO LTD

..... Appellant

Through Mr. L K Tyagi, Adv.

versus

MANJEET KAUR & ORS

..... Respondent

Through Proxy counsel

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Amardeep Singh, 35 years old, employed as a technical engineer with Hewlett Packward India Sales Ltd. died as a result of injuries suffered in a motor vehicular accident that occurred on 14.03.2010 involving negligent driving of a truck bearing registration No.RJ 02G 7547. It appears that at the time of the accident, Amardeep Singh was driving car bearing registration No.DL 4CAG 6911 in which his wife Harneet Kaur and daughter Amneet Kaur were also travelling. Harneet Kaur and Amneet Kaur, the wife and daughter, also perished in the same accident. The parents, first and second respondents (the claimants), surviving members of the family, instituted an accident claim case (MACT No.962/10) on 14.07.2010 seeking compensation under Sections 166 & 140 of Motor

Vehicles Act, 1988 (MV Act) impleading the appellant insurance company (insurer), the driver and owner of the offending vehicle as respondents. It is admitted by the insurer that the offending vehicle was insured against third party risk with it for the period in question.

2. At the inquiry, evidence was led and, by judgment dated 22.05.2013, the motor accident claims tribunal (tribunal) returned a finding that the accident and death had occurred due to negligent driving of the offending vehicle. This finding has attained finality as it was not challenged further. The tribunal awarded compensation in the sum of ₹1,71,08,992/- with interest at 9% per annum from the date of filing of the petition and directed the insurer to pay after deducting the amount of ₹50,000/- that had been paid earlier under Section 140 of MV Act.

3. The insurer is in appeal questioning the calculation of loss of dependency in the sum of ₹1,69,48,992/- as done by the tribunal. It is noted that on the basis of evidence led, the tribunal found that the deceased, aged 35 years, was earning ₹88,276/- per month as salary from Hewlett Packard India Sales Ltd. Having regard to the terms of engagement with the said employer, the tribunal added the element of future of prospects of increase of 50% and thus computed the income notionally at ₹1,32,414/- from which the dependency loss had to be worked out. It deducted 1/3rd of the income towards personal & living expenses and applied the multiplier of 16, according to the age of the deceased, to calculate the loss of dependency.

4. The appellant (insurer) submits that the tribunal fell into error by making deduction only to the extent of 1/3rd ignoring the fact that the father, earning ₹35,000/- as pension could not be a dependant and further that the

wife and daughter having died, the dependency loss which could be claimed by the mother would not be to the extent of $2/3^{\text{rd}}$ of the earning of the deceased. It is also submitted by the insurer that the age of the mother being 58 years at the time of the death, the multiplier of 9 should have been applied. The insurer further points out that in calculations, the tribunal did not make any deduction towards the income tax liability.

5. *Per contra*, it is argued by the claimants that the calculation made by the tribunal is in accord with the decision in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 and, therefore, there is no occasion for any interference.

6. The submissions of the insurer about errors in the calculation of loss of dependency deserve to be accepted. The tribunal could not have made the calculation without taking into account the liability towards income tax. Further, it cannot be said that the surviving mother would be dependent on $2/3^{\text{rd}}$ of the income of the deceased. The income provided by the deceased was being shared not only by her but also by the wife and daughter who, unfortunately, have also died. In these circumstances, the fair suggestion of the counsel for the insurer that the case be treated at par with those of bachelors and deduction to the extent of 50% towards personal & living expenses commends acceptance.

7. Further, it is well settled that the multiplier has to be adopted as per the age of the deceased or claimants, whichever is higher. [*G.M. Kerela SRTC vs Susamma Thomas* (1994) 2 SCC 176; *U.P.S.R.T.C. vs Trilok Chandra* (1996) 4 SCC 362; *New India Assurance Co. Ltd. vs Charlie* AIR 2005 SC 2157; *New India Assurance Co. Ltd. vs Shanti Pathak (Smt.) &*

Ors., (2007) 10 SCC 1; *Ramesh Singh & Anr. vs Satbir Singh & Anr.* (2008) 2 SCC 667; *National Insurance Company Ltd. vs Shyam Singh & Ors.* (2011) 7 SCC 65; *Ashwinbhai Jayantilal Modi vs Ramkaran Ramchandra Sharma & Anr.* (2015) 2 SCC 180] In these circumstances, the dependency loss has to be calculated on the multiplier of 9.

8. Having regard to the annual income of the deceased (88,276 x 12) ₹10,59,312/-, the liability towards income tax works out approximately in the sum of ₹1,82,000/-. The net income, thus, would be (10,59,312 – 1,82,000) ₹8,77,312/-. Adding the component of future prospects of increase to the extent of 50%, the notional net income is computed as (8,77,312 x 150 ÷ 100) ₹13,15,968/-. After deducting one-half and applying the multiplier of 9, the dependency loss is calculated as (13,15,968 ÷ 2 x 9) ₹59,21,856/- rounded off to ₹59,22,000/-. Adding the non-pecuniary damages, awarded by the tribunal, the total compensation payable in the case is calculated as (59,22,000 + 1,60,000) ₹60,82,000/-. The amounts of ₹50,000/- paid under the interim award shall now be suitably adjusted. The balance shall be payable to the claimant with interest as levied by the tribunal.

9. The tribunal by the impugned judgment had released only ₹10,000/- in cash to the claimant mother keeping the entire balance in fixed deposit receipt in her name with State Bank of India, Tis Hazari branch for a period of five years with right to draw monthly interest.

10. By order dated 30.07.2013, the insurance company had been directed to deposit 50% of the awarded amount with up-to-date interest with the Registrar General of this Court which was allowed to be released to her.

Having regard to the directions in the impugned judgment, the substantial part of the said deposited amount would still be lying in fixed deposit receipt. The Registrar shall now calculate the amount payable to the claimant in terms of the modified award and release the same to them in accordance with the directions in the impugned judgment, refunding the excess to the insurance company with statutory deposit, if made. For such purposes, he may issue appropriate directions to the Banks, where the fixed deposits are held.

11. The appeal is disposed of in above terms.

MAY 19, 2016
VLD

(R.K. GAUBA)
JUDGE

