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

Date of Decision: 12.05.2016

\+ **MAC.APP. 604/2007**

MS. HARJINDER KAUR AND ORS. ..... Appellants
Through: Mr. Pradeep Gaur, Advocate

versus

GURCHARAN SINGH AND ANR. ..... Respondents
Through:Mr. S.N. Parashar, Adv. for R-1

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Raman Deep Singh, 19 years old, admittedly then a student of 12th standard, died as a result of the injuries suffered in a motor vehicular accident that occurred on 16.03.2005, on account of negligent driving of a motor vehicle described as Indica bearing registration no.DL-4CM-1454 (offending vehicle) which was indisputably insured against third party risk with United India Assurance Co. Ltd. (second respondent). The deceased was a bachelor. His parents and sisters (appellants) instituted an accident claim case (suit no.499/05) on 02.06.2005 before the Motor Accident Claims Tribunal (tribunal) impleading the insurer and Gurucharan Singh, driver-cum-owner of the offending vehicle as respondents alleging that the accident had occurred due to the negligent driving by the latter.

2. The tribunal upon inquiry, by judgment dated 26.03.2007, upheld the case that the accident had occurred due to negligent driving of the offending vehicle. This finding has attained finality. By the impugned judgment, the tribunal awarded compensation in the sum of Rs.3,60,000/- which includes Rs.13,000/- towards loss of love and affection and Rs.10,000/- towards funeral rights besides Rs.3,37,000/- towards loss of financial dependency. The last said component was calculated on the assumed income of Rs.3510/- it being the minimum wages of a matriculate, from which 1/3rd was deducted towards the personal and living expenses and the financial dependency was calculated by applying the multiplier of 16.

3. The claimants have filed the present appeal submitting that the evidence adduced by them through Jairnail Singh (PW-2) to the effect that the deceased was employed with him as a professional land surveyor since 14.01.2004 at a salary of Rs.7,500/- plus boarding and lodging had been wrongly rejected by the tribunal. It is also submitted in the appeal that deduction on account of 1/3rd towards personal and living expenses was unreasonable and the multiplier of 16 had been wrongly chosen. The claimants also submitted that the tribunal had granted interest (8% p.a.) on the lower side resulting in inadequate award.

4. At the hearing, neither side appeared to assist. This was the state of affairs even on the preceding date. There is no good ground as to why the matter should be deferred yet again.

5. On perusal of the tribunal's record and the impugned judgment, this court finds that the evidence given through PW-2 has been rejected by the tribunal for sound reasons. PW-2 admittedly is a close relative of the

claimants. He tried to support his evidence with regard to the employment of the deceased with him on the basis of income tax return (Ex. PW2/R2/1) which, it was noticed, had been submitted after the accident. No income tax return for the preceding or subsequent years was made available. The deceased was admittedly a student of 12th standard. There is no evidence indicating that he had been trained as a land surveyor. In these circumstances, the only approach available to the tribunal was to go by the minimum wages.

6. The deduction on account of personal and living expenses to the extent of 1/3rd rather was wrong. Having regard to the law laid down in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.,* (2009) 6 SCC 121, deduction under the said head will have to be made to the extent of 50%.

7. The deceased was 19 years old bachelor and, therefore, the loss of dependency had to be calculated on the multiplier adopted as per the age of the claimants. It is noted that the claim was essentially filed by the parents. As per the copies of Voter identity card on record (page 257 and 259 of the tribunal's record), the age of the father Balbir Singh as on 01.01.1994 was 42 years and that of the mother Harjinder Kaur as on 01.01.1994 was 34 years. Since the death had occurred on 16.03.2005, they would be 52 years and 44 years old respectively. The average age being 48 years, the multiplier of 13 would apply. Thus, the total loss of dependency is calculated as (Rs.3,510/2 x 12 x 13) Rs.2,73,780/-, rounded off to Rs.2,75,000.

8. It is, however, noted that the award under the non-pecuniary heads of damages is inadequate. Further, no award has been granted towards loss of estate. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, awards of Rs.1 Lakh towards loss of love and affection and Rs.25,000/- each towards funeral expenses and loss to estate are added. The total compensation awardable in the case, thus, comes to (Rs.2,75,000/- + Rs.1,50,000/-) Rs.4,25,000/-.

9. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*].

10. The award is modified accordingly.

11. The insurer is directed to deposit the amount payable in terms of the above modification in the award and interest with the tribunal within 30 days of this judgment. In the given facts and circumstances, it is directed that the entire said amount now to be deposited by the insurer shall be payable to the first appellant / claimant (mother) alone.

12. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 12, 2016
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