

\$~R-82

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

Date of Decision: 11th May, 2016

+ **MAC.APP. 575/2007**

NEW INDIA ASSURANCE CO LTD Appellant
Through: Mr. Pankaj Seth, Adv.

versus

NIRMALA DEVI & ORS Respondent
Through: Mr. Jatinder Kamra, Adv.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Sehdev Prasad Shukla, found to be then aged 48 years, died as a result of injuries suffered in a motor vehicular accident that occurred on 29.05.2006 involving truck bearing No.HR 46B 2216 (the offending vehicle) admittedly insured against third party risk with the appellant insurance company. The first to sixth respondents (claimants), dependant family members, instituted an accident claim case (petition No.862/06) on 31.07.2006 under Sections 166 & 140 of Motor Vehicles Act, 1988 (MV Act) impleading the appellant insurance company (insurer) as one of the respondents since the offending vehicle was insured with it for the period in question, in addition to the driver and owner of the offending vehicle. Tribunal noted in the impugned judgment that there was no proof of

negligent driving being the cause of the accident. It, however, decided to treat the claim petition as one under Section 163A of MV Act. By judgment dated 14.06.2007, it awarded compensation in the total amount of compensation of the sum of ₹5,15,123/- with interest at 7.5% per annum. It calculated the loss of dependency at ₹4,35,123/- assuming the income of the deceased at ₹3,719/- per month, it being the minimum wages payable to a matriculate at the relevant point of time and after deduction of 1/4th towards personal & living expenses applied the multiplier of 13. The amounts of ₹60,000/- towards loss of love & affection and ₹20,000/- towards funeral expenses were also added.

2. The insurance company which was directed to pay has come up in appeal taking exception to the award mainly submitting that the calculation of compensation is not in accord with the second schedule to the MV Act which would govern the case since the tribunal resorted to work out the same under Section 163A. At the hearing, neither side has appeared to assist.

3. On perusal of the tribunal's record, it is noted that the age of the deceased was taken as 48 on the basis of what was mentioned to be the post-mortem examination report. It is not clear as to what was the basis of the said mention of age recorded by the autopsy doctor. The copy of the ration card (Ex.PW1/7) on record instead shows the age of the deceased was 45 years at the relevant point of time. In these circumstances, the tribunal fell into error by taking the multiplier of 13. The proper multiplier for calculating the loss of dependency would have been 14. As per the second schedule, the personal & living expenses are to be deducted at the

rate of $1/3^{\text{rd}}$. Thus, the dependency loss in the present case is recalculated as $(3,719 \times 2 \div 3 \times 12 \times 14)$ ₹4,16,528/- rounded off to ₹4,20,000/-.

4. Under the second schedule, the non-pecuniary damages in the sum of ₹2,000/- towards funeral expenses, ₹5,000/- towards loss of consortium and ₹2,500/- towards loss to estate are also added. Thus, the total compensation in the case comes to $(4,20,000 + 9,500)$ ₹4,29,500/- rounded off to ₹4,30,000/-.

5. 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.

6. By order dated 19.09.2007, the insurance company had been directed to deposit the entire awarded amount with the Registrar General within the period specified. By order dated 20.04.2009, the said deposited amount was transferred to the tribunal which was allowed to release ₹50,000/- to the first respondent, the balance having been directed to put in fixed deposit receipt for the period specified. By order dated 08.04.2013, 80% of the awarded amount in addition to ₹50,000/- already released was also allowed to be released in favour of the claimants.

7. The tribunal shall calculate the amount now payable to the claimants under the award modified as above and release the same to them refunding the excess, if any, to the insurance company. Conversely, if any further amount is to be paid to the claimants, the insurer shall be obliged to deposit the same with the tribunal within 30 days hereof making it available for being released to the claimants.

8. The registry shall refund the statutory amount to the insurer, if deposited, after confirming that the award has been satisfied.
9. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 11, 2016/VLD

