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

Date of Decision: 28th March, 2016

+ **MAC.APP. 867/2012 & CM No.13708/2012 (stay)**

CHOLAMANDALAM MS GEN INS CO LTD

..... Appellant
Through Mr. Pankaj Gupta, Adv. for Ms.
Suman Bagga, Adv.

versus

MANJU DEVI & ORS

..... Respondent
Through Mr. Sanjiv Gupta and Mr. Vittan
Khan, Advs.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Subhash, then 29 years old, a driver by avocation, suffered death on account of injuries sustained in a motor vehicular accident that occurred at about 10 PM on 12.02.2011 involving truck trailer bearing registration No.HR 55A 8017 (the offending vehicle), admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question. His wife, parents and three children preferred an accident claim case (suit No.611/2011) on 18.04.2011, in the context of detailed accident report (DAR) submitted by the local police, pursuant to the first information report (FIR) that had been registered vide No.38/2011 in police station Badarpur. In the claim case under Sections 166 and 140 of Motor Vehicles

Act, 1988 (MV Act) besides the insurer, the driver and owner of the offending vehicle were also impleaded as respondents. The tribunal held inquiry and, by judgment dated 02.06.2012, awarded compensation in the sum of ₹23,90,600/- on account of death in favour of the claimants (dependent family members) with interest at 9% per annum from the date of filing of the petition, computing the said amount as under :

“Loss of Dependency	Rs.23,25,600/-
Funeral Expenses	Rs. 20,000/-
Love & Affection	Rs. 25,000/-
Loss of Consortium	Rs. 10,000/-
Loss of Estate	Rs. 10,000/-
Total	Rs. 23,90,600/-”

2. The insurance company having been fastened with the liability to pay has preferred this appeal questioning the computation on account of loss of dependency arguing that there was no proof of income in the sum of ₹9,500/- per month as concluded by the tribunal and also taking exception to the element of future prospects of increase to the extent of 50%. *Per contra*, the claimants (first to sixth respondents) seek to point out that the non-pecuniary damages granted by the tribunal are inadequate.

3. The tribunal concluded that the deceased was earning ₹9500/- per month, relying upon the evidence of Charanjt Singh (court witness), the transporter engaged by Indian School at Joseph Tito Marg which had employed the deceased as driver of the rural transport vehicle (RTV) at the relevant point of time. Clearly, the tribunal has misread the evidence as mere oral word that the income had increased to ₹9,000/- per month has been taken as the proof to conclude that the income had to be in the region

of ₹9,500/- per month inclusive of over-time and other incentives. The salary vouchers produced by the witness do show that the deceased was earning ₹6,500/- per month at the time of death. This, the learned counsel for the claimants fairly concedes, should have been the appropriate benchmark to work out the loss of dependency.

4. The argument of the insurer that the element of future prospects could not have been added cannot be accepted for the simple reason the evidence of the said witness showed that the salary had been on the progressive rise, it having risen from the level of ₹4,500/- per month only at the time of his initial engagement with the same employer. Thus, the loss of dependency has to be calculated with income of ₹6,500/- with addition of future prospects of increase to the extent of 50%. While calculating, the tribunal deducted 1/5th on account of personal & living expenses. Since the number of dependents is six, the deduction will have to be to the extent of 1/4th.

5. In above view, the loss of monthly dependency has to be calculated on the notional income of $(6,500 \times 150 \div 100)$ ₹9,750/-. Upon deducting 1/4th towards personal & living expenses, the monthly dependency loss comes to $(9,750 \times 3 \div 4)$ ₹7,313/-. On the multiplier of 17, the total loss of dependency is computed as $(7,313 \times 12 \times 17)$ ₹14,91,852/-, rounded off to ₹14,92,000/-.

6. The grievance of the claimants about the non-pecuniary damages is correct. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, compensation in the sum of ₹1 lakh each on account of love & affection and

loss of consortium and ₹25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case is computed as (14,92,000 + 2,50,000) ₹17,42,000/-. The compensation is reduced accordingly. It shall, however, carry interest as levied by the tribunal.

7. The tribunal had apportioned the compensation awarded by it by specifying the amounts which would fall to the share of each claimant. By order dated 13.08.2012, 80% of the awarded amount was directed to be deposited with UCO Bank, Delhi High Court branch in the name of the claimants within the period specified and upon such deposit 50% of the awarded amount was allowed to be released.

8. Since the award has been reduced, it is directed that the entire balance from out of the award granted by this Court shall now be payable to the first respondent (claimant) Manju Devi only, it being put in fixed deposit receipt for a period of 10 years with liberty to draw monthly interest.

9. The Registrar General shall calculate the amount payable in terms of the award modified as above and release the same from out of the deposited amount, refunding excess, if any, to the insurer. Conversely, if any, further amount remains outstanding, the insurer shall be liable to deposit the same with the tribunal within 30 days of this order.

10. The statutory deposit, if made, shall also be refunded.

11. The appeal is disposed of in above terms.

MARCH 28, 2016
VLD

R.K. GAUBA
(JUDGE)