

\$~R-131

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

Date of Decision: 01.06.2016

+ **MAC.APP. 93/2008**

PRADEEP KUMAR AGRAWAL & ORS.

..... Appellants

Through None

versus

MAHIPAL SINGH & ORS.

..... Respondents

Through Mr. Pankaj Seth, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Deepanshu Agrawal, a student of fourth year (final) of engineering course in information technology, also an aspirant for a degree of master of business administration, suffered injuries in a motor vehicular accident that occurred on 13.09.2005 involving negligent driving of a tractor trolley bearing registration No.UP 81 M 7961 (offending vehicle) and consequently died. His parents, the appellants, instituted an accident claim case (petition No.18/06) on 07.02.2006 seeking compensation under Sections 166 & 140 of Motor Vehicles Act, 1988 (MV Act) impleading, amongst others, the third respondent (insurer), it admittedly having issued a third party risk insurance policy in respect of the offending vehicle for the period in question. Upon inquiry, by judgment dated 01.08.2007, the motor accident claims tribunal (tribunal) upheld the case about death due to negligent driving of the offending vehicle. It awarded compensation in the sum of

₹7,60,000/- with interest at 7% per annum in favour of the claimants, the said amount being inclusive of ₹10,000/- towards funeral expenses and ₹30,000/- towards loss of love & affection, besides, ₹7,20,000/- towards loss of dependency.

2. The claimants, by the appeal at hand, submitted that the award of compensation granted in their favour is inadequate. The appeal was entertained and notice was issued to the insurer by order dated 29.02.008. The appeal was directed to be put in list of regular matters as per order dated 06.05.2008. At the hearing, no one has appeared for the appellant to assist. The arguments of the insurer have been heard and the record perused.

3. It is noted that the evidence led on record showed that the deceased was still a student of engineering degree. Though he seems to have received certain offers of appointment including one dated 08.07.2004 from company described as Energizer (Ex.PW1/24) whereby he was to be appointed as Assistant Executive at the total remuneration of ₹9,015/- per month, another document dated 12.04.2007, again issued by the same company (Ex.PW1/4) shows that he had worked with the said entity in September, 2004 for a period of seven days only at the total emoluments of ₹7,900/- per month, in addition to which he was eligible to receive incentive to the tune of ₹4,000/- per month. As against this material, the tribunal has proceeded on calculating the loss of dependency assuming the income at much higher level of ₹15,000/- per month. Therefore, the calculations made by the tribunal to grant the award on account of loss of dependency cannot be grudged.

4. There is, however, merit in the contention in the appeal that the non-pecuniary heads of damages were not properly taken care of. 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 on account of loss of love & affection and ₹25,000/- each towards loss of estate and funeral expense deserve to be granted. Since these awards were made only in total sum of ₹40,000/- the compensation deserves to be increased by ₹1,10,000/-.

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. It is directed that the entire enhanced portion of the award including on account of increased rate of interest shall fall to the share of the second appellant Uma Agrawal.

7. The award is modified accordingly.

8. The insurance company is directed to satisfy the modified award within 30 days of this judgment.

9. Statutory deposit, if made, shall be refunded.

10. The appeal is disposed of in above terms.

11. Since the award has been modified, a copy of this judgment shall be sent by the registry to the claimants by registered post at their given address.

(R.K. GAUBA)
JUDGE

JUNE 01, 2016/VLD