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

Date of Decision: 31.05.2016

\+ **MAC.APP. 34/2008 & CM Nos.889/2008 & 890/2008**

S. CHARANJIT SINGH & ANR. ..... Appellants
Through: None.

versus

A.K. YADAV AND ORS. ..... Respondent
Through: None.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Satnam Singh, son of the appellants, a bachelor, died as a result of injuries suffered in a motor vehicular accident that occurred on 06.06.2005 involving negligent driving of motor vehicle described as Tata truck No. HR 38 2711 (offending vehicle), admittedly insured against third party risk with fourth respondent (insurer) for the period in question. The appellants instituted an accident claim case (Petition No. 183/2005) on 12.07.2005 seeking compensation under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act), impleading the said driver as party, in addition to driver, owner and registered owner of the offending vehicle. The motor accident claims tribunal (tribunal) clubbed the said case with other two similarly placed accident claim cases arising out of the same accident and held inquiry. By common judgment dated 19.05.2007, the case of the appellants

about death having occurred due to negligent driving of the offending vehicle was upheld, the said finding having attained finality as it was not further challenged in appeal.

2. By the aforementioned judgment, the tribunal awarded compensation in the sum of ₹ 3,58,800/- with interest @ 7% per annum in favour of the claimants and directed the insurer to pay, after adjusting ₹ 50,000/- which had been earlier paid in terms of the order under Section 140 of MV Act.

3. The claimants feeling aggrieved filed the present appeal submitting that the compensation awarded is inadequate.

4. Notice on the application for condonation of delay was issued on 3rd March, 2008. On 22nd April, 2010, it was submitted on behalf of the appellant that it presses the appeal only against the insurance company (fourth respondent). It was noted that the insurance company had by the time been served and had even put in appearance. The matter was directed to be shown in the category of regular matters to come up on its own turn. Thereafter, whenever the matter was taken up on 23rd December, 2014, none had appeared for the appellant. Notice was issued for 9th January, 2015, for the parties to appear before the roster bench. The first appellant appeared in response on 9th January, 2015 but only to seek adjournment. None has appeared on the matter being taken up again. This appeal is now the oldest appeal on the board of this Court, and, therefore, there is no good reason to defer it yet again.

5. The grounds of appeal and the tribunal's record have been perused. It is noted that though the claimants had pleaded that the deceased was earning

₹ 12,000/- per month and was also assessed to income-tax, the first claimant having testified that the deceased was earning his livelihood by running his business in the name and style of Chana Enterprises at Khyala Village, conceded during cross-examination that he was actually earning ₹ 200 to ₹ 300 per month from the job work of sheet metals. No proof of assessment to income-tax was formally adduced. In absence of any clear evidence as to the nature of employment or earnings, the tribunal was constrained to make assessment on the basis of minimum wages and, thus, worked out the annual dependency loss to be in the sum of ₹ 27,600/- and, applied the multiplier of 13, taking note of the fact that the claimants were 48 and 45 years respectively old on the date of accident. The choice of multiplier (13) also cannot be faulted.

6. The claimants have also submitted that the tribunal did not make any award under the non-pecuniary heads of damages. This submission is correct. Following the view taken by this Court in *Madhu Marwaha & Anr. vs. Dal Chand & Anr.* In FAO 102/2001 decided on 1st February, 2016, award in the sum of ₹ 50,000/- each towards love & affection and loss of consortium and ₹ 10,000/- each towards funeral expenses and loss to estate are added. This would result in net increase in the compensation by ₹ 1,20,000/-.

7. 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*.].

8. Given the apportionment made by the tribunal earlier, it is directed that the entire enhanced portion of the award including on account of increase in the rate of interest shall fall to the share of the second claimant (Harjinder Kaur) appellant. The insurer (fourth respondent) is directed to satisfy the enhanced portion by requisite deposit with the tribunal within 30 days. Upon such deposit being made, the tribunal shall release the amount to the second appellant (Harjinder Kaur) by investing it in a fixed deposit receipt for a period of five years with right to draw monthly interest.

9. The appeal is disposed of in above terms.

10. Since the award has been modified, a copy of this judgment shall be sent by the registry to the claimants and the insurance company by registered post at their respective given addresses.

(R.K. GAUBA)
JUDGE

MAY 31, 2016
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