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

Date of Decision: 12th February, 2016

\+ **MAC.APP. 1116/2012 & CM Nos.17949/2012 & 14007-14008/2014**

NATIONAL INSURANCE CO. LTD ..... Appellant

Through Mr. Shoumik Mazumdar, Adv. for Mr. Pankaj Seth, Adv.

versus

NIHAL CHAND GUPTA & ORS ..... Respondent

Through Mr. S N Parashar, Adv. for R-1 & 2

\+ **MAC.APP. 812/2014**

SH. NIHAL CHAND GUPTA & ANR ..... Appellant

Through Mr. S N Parashar, Adv.

versus

NATIONAL INSURANCE COMPANY LTD & ORS .... Respondent

Through Mr. Shoumik Mazumdar, Adv. for Mr. Pankaj Seth, Adv.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Both these appeals seek to question the computation of compensation by the Motor Accident Claims Tribunal (the Tribunal) as awarded by judgment dated 13.03.2014 on claim petition under Sections 166 and 140 of Motor Vehicles Act (MV Act) registered as Suit No.64/2010. The claim case was presented by Nihal Chand Gupta and Mr. Vijay Kumar Gupta (collectively, the claimants) on account of death in motor vehicular accident of Kamla at about 10 AM on

28.08.2007 near Police picket, Sector-A, Vasant Kunj, New Delhi involving Maruti car bearing registration No.DL 3C AW 3175 (the offending vehicle) which concededly was insured against third party risk with National Insurance Company Ltd. (the insurer).

2. While the insurer brought appeal (MAC.APP.1116/2012) mainly to question the award of medical expenses in the sum of Rs.30,76,000/- and the deduction on account of personal and living expenses restricted to the extent of 1/3rd in calculation of loss of dependency, the claimants by way of their appeal (MAC.APP.812/2014) seek enhancement on the non-pecuniary heads of loss of love and affection and loss of consortium stating that the amounts of Rs.25,000/- and Rs.10,000/- each on that account are deficient.

3. Having heard both sides, the two appeals are being disposed of through this common judgment.

4. The Tribunal has noted the following facts in (para 17 of) the impugned judgment, which are relevant for purposes of considering the objection to the award of medical expenses:

> *"17. PW1 has stated that after the accident, Smt. Kamla Devi was removed to ISIC, Vasant Kunj in unconscious condition where her MLC Ex.PW1/44 was prepared. He stated that the condition of the deceased remained critical throughout her treatment lasting for a period of 13 months. She never regained consciousness despite extensive medication. She died on 26.09.08. He stated that about Rs. 30 lakhs were incurred on her medication. The hospital had given him a consolidated bill of Rs.26,30,676.98 out of which he had paid Rs. 5,30,000/-. Balance amount remained outstanding. He placed on record the bills and the cash receipts Ex.PW1/48 to 64 and stated that in addition, local purchase of medicines was made and an expenditure was incurred on other items amounting to*

Rs.3,25,436.42 which were paid in cash vide receipts Ex.PW1/65-236. He stated that his wife was educated, robust and strong. She was an active member of Rashtriya Ekta Nirman Samiti. He filed the identity card of deceased Ex.PWl/237. PW-2 brought the treatment record of the deceased and stated that she remained admitted from 28.08.07 till her death i.e. 26.09.08. During her treatment the hospital charged a sum of Rs.26,30,676.98 out of which Rs. 5,30,000/- were deposited and the remaining amount is still to be paid by the family of the deceased. R3W1 is the Manager Accounts of ISIC Centre, Vasant Kunj. He also deposed on the lines of PW2 and gave the complete break-up of original payment summary EX.R3W1/1 (colly.). He stated that in the balance sheet and books of accounts of the hospital, outstanding payment is reflected. In the instant case, PW-1 has given an affidavit that on 05.12.11 he has received a notice of the suit for recovery of Rs.28,56,920.69 alongwith pendelite interest and future interest U/o 37 CPC in respect of the outstanding dues of Rs.21,00,676.98. He stated that he undertakes to settle the payment in the Court."

5. The claimants have shown, by documentary proof, that civil suit (original side) No.2656/2011 was preferred against them by Indian Spinal Injuries Centre (ISIC) under order 37 of the Code of Civil Procedure, 1908 (CPC) pressing for recovery of the outstanding medical bill. The said civil suit has since been transferred to the Court of District and Sessions Judge, New Delhi by order dated 04.12.2015 of Joint Registrar (Judicial) of this Court on account of change of the pecuniary jurisdiction.

6. The fact remains that the medical treatment of the victim Kamla Devi on account of injuries suffered on 28.08.2007 for the entire period of hospitalization till she died as indoor patient on 26.09.2008 was issued in the sum of Rs.26,30,676.98. It does appear that the claimants were unable to make the payment beyond Rs.5,30,000/-, the balance

dues of the hospital having remained outstanding. The submission on behalf of the insurance company essentially is that since the bill has not been paid in full, it could not have been treated as an expenditure incurred and, thus, the claim for its reimbursement could not have been pressed.

7. To say the least, the submission of the insurance company is not only irresponsible but in very poor taste and, therefore, cannot be approved of. The responsibility of the insurance company is not only to reimburse what has been incurred as expenditure but also to take over responsibility to pay for what may have to be paid as a result of the injuries suffered on which count the claim arises. It is hoped that the insurance company will henceforth conduct itself in a more responsive manner to its statutory obligations.

8. Coming to the contention that the personal and living expenses should have been deducted more than 1/3rd while calculating the loss of dependency, again the contention is devoid of substance. There were two dependents of the deceased who have come forward to seek compensation. In these circumstances, the approach of the Tribunal cannot be faulted.

9. It is noted, however, that the Tribunal also awarded Rs.25,000/- towards pain and suffering. Since the compensation was sought by the claimants on account of death, the non-pecuniary damages in the nature of pain and suffering, being personal to the victim, could not have been added. This amount would have to be deducted from the overall compensation granted.

10. There is substance in the grievance of the claimants that the compensation awarded on account of loss of love and affection and loss

of consortium is inadequate. The accident occurred in August, 2007. Having regard to the approach adopted by the Supreme Court in similarly placed case reported as *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54, compensation in the sum of Rs.1 lakh each on account of loss of love and affection and loss of consortium deserves to awarded.

11. Thus, the total compensation would need to be enhanced by net Rs.1,40,000/-.

12. The compensation payable is, therefore, enhanced to (34,41,000 + 1,40,000) Rs.35,81,000/- (Rupees Thirty Five Lakhs and Eighty One Thousand only). Needless to add, the interim award granted earlier shall be adjusted and the compensation shall carry the interest as levied by the Tribunal.

13. By order dated 16.10.2012 in MAC.APP.No.1116/2012, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest out of which 60% was allowed to be released by order dated 08.01.2014. The balance amount lying in deposit shall also be released to the claimants in terms of the aforementioned directions.

14. The insurance company is directed to deposit the balance liability with the Tribunal within 30 days whereupon the Tribunal shall release the same to the claimants in terms of the directions given in the order made above.

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

16. Trial court record be returned.

FEBRUARY 12, 2016/VLD **R.K. GAUBA**
(JUDGE)