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

Date of Decision: 16th March, 2016

+ **MAC.APP. 166/2012**

JAI PRAKASH SHARMA & ORS Appellants
Through: Mr. Gurmit Singh Hans, Adv.

versus

NEW INDIA ASSURANCE CO LTD & ORS Respondents
Through: Mr. P Acharya, Adv. with Ms. Nitika
Chaturvedi, Adv.

+ **MAC.APP. 354/2014**

THE NEW INDIA ASSURANCE CO LTD Appellant
Through: Mr. P Acharya, Adv. with Ms. Nitika
Chaturvedi, Adv.

versus

JAI PRAKASH SHARMA & ORS Respondents
Through: Mr. Gurmit Singh Hans, Adv. for R-1
to 4

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Mr. Rajesh Kumar Vats, then aged 34 years, a businessman, was driving motorcycle bearing registration No.DL 5ST 8061 (the motorcycle) with his friend Mohd. Jahangir (PW4) riding on the pillion at about 4.30 PM

on 18.09.2006 when in the area of Gole Chakkar, Amrit Puram he met with an accident involving collision against truck bearing registration No.UHP 703 (the offending vehicle) resulting in his death. The accident claim case registered as MACT case No.324/2010, was filed on 28.03.2007 by his father, mother, wife and minor daughter (appellants in MAC.APP.No.166/2012) seeking compensation under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act), impleading Firoz Khan and Mohd. Yusuf, the driver and owner respectively of the offending vehicle, in addition to New India Assurance Co. Ltd. (the appellant in MAC.APP.No.354/2014). On the basis of inquiry held, the tribunal, by judgment dated 16.07.2011, concluded that the accident had occurred due to negligent driving of the offending vehicle. It awarded compensation in the sum of Rs.9,65,251/- with interest at 8% per annum from the date of filing of the petition till realization in favour of the claimants apportioning the said award by specifying the amounts that would fall to the share of each claimant. The compensation awarded included Rs.9,25,251/- towards loss of dependency and Rs.10,000/- each under the pecuniary heads of damages of loss of love & affection, loss of consortium, loss of estate and funeral charges.

2. The claimants have come up in appeal (MAC.APP.No.166/2012) expressing grievance that the compensation awarded is inadequate. The insurance company has come up separately in its appeal (MAC.APP.No.354/2014) mainly to contend that there was contributory negligence on the part of the deceased as there was a head-on collision.

3. Having heard both sides and having gone through the tribunal's record, this Court finds no substance in the contention of the insurance company. The evidence of Mohd. Jahangir (PW4) on the strength of his affidavit (Ex.PW4/A) has been duly considered by the tribunal in the impugned judgment. It brought out the fact that the accident had occurred when the offending vehicle had come at a very rash speed to strike against the motorcycle. Merely because at some stage the witness would state that there was a head-on collision, one cannot jump to the conclusion that there was contributory negligence on the part of the drivers of both vehicles involved. There is no thumb rule that if there is a head-on collision, each driver is to be held accountable. In order to show contributory negligence, the insurer was required to bring out further facts, including the non-justification for the motorcycle rider to be in the lane meant for the truck from the opposite side at the crucial point of time. No such evidence was produced. In above facts and circumstances, the appeal of the insurance company is liable to be dismissed.

4. The tribunal noted in the impugned judgment that the evidence led by the claimants showed that deceased was a businessman. Income tax returns (ITRs) for the assessment years 2004-05, 2005-06 and 2006-07 were submitted as proof of income. The tribunal decided not to go by the ITR for 2006-07 inasmuch as the said document showing almost 100% increase in the income over the previous period had been submitted in February, 2007 by the widow, much after the death. In absence of further proof that the declaration of income in the said document was founded on concrete material, the exclusion of the said material from consideration is found to be

appropriate. In above facts and circumstances, there is no error in the calculation of the loss of dependency on the basis of income tax return for assessment year 2005-06, the last one submitted by the deceased himself, it indicating his annual income to be 86,742/28.

5. The contention of the claimants in appeal further is that they had also led evidence through Basi Khan (PW3), Manager, Industry of Greater Noida, Industrial Development Authority to show that the deceased had conceived plans for expansion of his business activities and therefore, the possibility of increase in income in future should have been taken into account. The plans for expansion of business in future are full of uncertainties. No definite view can be taken as to how the activities or income of the deceased would have increased over the period as a result of such expansion. Any consideration on such basis would be in the nature of speculation, which is not advisable.

6. There is, however, substance in the submission of the claimants that the deduction on account of personal and living expenses to the extent of 1/3rd was not proper on the reasoning that the father could not be considered a dependent. It appears that the father had retired from government service long ago and is in receipt of some pension. This Court does not accept the reasoning set out by the tribunal in excluding the father from amongst the dependents to deduct 1/3rd towards personal and living expenses. There was no inquiry made as to how much is the pension earned by the father. There is contradiction in the approach of the tribunal inasmuch as having excluded him from amongst the dependents, in the concluding part, it apportioned a share in favour of the father from out of the compensation awarded.

7. Having regard to the advanced age of the father, it cannot be said that he would be not looking up to the son for further financial support. Thus, the claimants (dependents) being four in number, personal and living expenses should have been deducted to the extent of $1/4^{\text{th}}$ rather than $1/3^{\text{rd}}$. In this view, the annual loss of dependency is recalculated as $(86,742 \times 3 \div 4)$ Rs.65,057/-. On the multiplier of 16 the total loss of dependency comes to $(65,057 \times 16)$ Rs.10,40,912/- rounded off to Rs.10,41,000/-.

8. Indeed, the non-pecuniary heads of damages have not been properly awarded. Following the view in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, an award of Rs.1 lakh each on account of loss of love & affection and loss of consortium besides Rs.25,000/- each towards loss of estate and funeral expenses are awarded. Adding these, the total compensation payable in the case is worked out as $(10,41,000 + 2,50,000)$ Rs.12,91,000/-. 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.

9. Having regard to the amounts already apportioned in favour of the other claimants, it is directed that the entire enhanced portion of the compensation with the effect of increase in the rate of interest shall be payable to the third claimant Santosh Vats @ Santosh Kumari, wife of the deceased. The insurance company is directed to deposit the amount payable in terms of the enhanced award with the tribunal within 30 days whereupon it shall be released.

10. By order dated 18.10.2011 in MAC.APP.No.920/2011 filed earlier by the insurance company, the execution of the award was stayed subject to it depositing the entire awarded amount with the Registrar General within the period specified. By order dated 15.02.2012, 50% of the said deposit was allowed to be released. The said appeal was allowed to be withdrawn by order dated 21.03.2014 with liberty to the insurance company to file a fresh appeal. The balance 50% of the deposit thus made is lying in the Court. The Registrar General shall release it forthwith to the claimants in terms of the impugned award.

11. The statutory deposit, if made by the insurer in this appeal, shall be refunded.

12. Both appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 16, 2016
VLD