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

Date of Decision: 12th May, 2016

+ **MAC.APP. 805/2014**

NATIONAL INSURANCE CO. LTD Appellant

Through: Mr. L. K. Tyagi, Adv.

versus

SHALINI PANDEY & ORS Respondents

Through: Mr. Yashpal Sapra, Adv.

AND

+ **MAC.APP. 953/2014**

SHALINI PANDEY & ORS Appellants

Through: Mr. Yashpal Sapra, Adv.

versus

AJEET SINGH & ORS (NATIONAL INSURANCE CO.LTD)
..... Respondents

Through: Mr. L. K. Tyagi, Adv. for R-3.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Shivam Pandey, a bachelor, aged 28 years at that point of time, working as a sales consultant with Denave India Pvt. Ltd. (Nokia-FF) Assotech One, Noida was riding on his motorcycle bearing registration

no.DL-10S-6223 (the motorcycle) on 13.09.2013 when it was involved in a motor vehicular accident with a truck bearing registration no.HR-55H-0913 (the truck) at about 00:15 hours on Rao Tula Rao Marg opposite Army Signal Regiment, Delhi Cantt. As a result of injuries suffered in the process Shivam Pandey died. It appears that his parents had pre-deceased him. His sisters including one unmarried, aged 24 years and the other two elders, both married, first to third respondents (appellants in MAC Appeal no.953/2014) instituted an accident claim case (suit no.308/2014), on 19.02.2014, seeking compensation under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act). In the said case, National Insurance Co. Ltd. (appellant in MAC appeal no.805/2014) was impleaded as third respondent, in addition to the driver and owner respectively of the offending vehicle, they now being respondents in both the appeals. It was alleged in the claim case that accident had occurred due to negligent driving of the offending vehicle.

2. The tribunal held inquiry and, by judgment dated 02.07.2014, upheld the case of the claimants about death having occurred due to accident caused on account of negligent driving of the offending vehicle. Neither the driver nor the owner have challenged the said finding by any appeal.

3. The tribunal calculated the compensation as under:-

Loss of dependency	:₹18,70,500/-
Love and affection	:₹30,000/-
Loss of Estate	:₹10,000/-
Funeral expenses	:₹25,000/-
Total	:₹19,35,500/-

4. The amount of ₹19,35,500/- was awarded as compensation with interest at the rate of 7.5% per annum in favour of the claimants, apportioning 80% to the unmarried sister (first claimant) and 10% each to other sisters (second and third claimants). The tribunal also held that the deceased was guilty of contributory negligence to the extent of 25%. Thus, the compensation to be paid was reduced correspondingly.

5. The insurer which was burdened with the liability to pay, by its appeal (MAC appeal no.805/2014), has argued on the basis of judgment of this court in *Keith Rowe vs. Prashant Sagar & Ors*, II (2010) ACC 64 that in case of this nature where all the claimants are adult and assumably self reliant, instead of loss of dependency, loss to estate should have been calculated. It is submitted that per the decision in *Keith Rowe* (supra), particularly the principles summarized in para 20 “v”, loss to estate could not have been more than 15% of the income of the deceased, the claim having been submitted by the sisters, only one of whom was unmarried. The insurer further takes exception to addition of future prospects to the extent of fifty percent (50%).

6. *Per contra*, the claimants by their appeal question the finding recorded by the tribunal holding the deceased guilty of contributory negligence, submitting that the said conclusion is not borne out from the material on record. It is further their grievance that the net income of the deceased had been proved through the salary record but has not been properly taken into account and deduction on account of conveyance and medical allowance were wrongly made. The claimants further argued that the given the decision in *Keith Rowe* (supra) relied upon by the insurer, the

multiplier of 18 should have been applied having regard to the age of the first claimant (24 years).

7. Having heard both sides and having gone through the tribunal's record, this court finds substance in the grievances of the claimants with regard to finding of contributory negligence. It appears that the tribunal reached the finding without any evidence to that effect being led before it. Noticeably, truck driver did not participate in the inquiry. He was in the best position to explain as to why the collision took place. He did not offer his own version. In these circumstances, there was no escape from reaching proper conclusions on this issue except on the basis of facts and circumstances brought before the tribunal by the local police through detailed accident report (DAR) which includes the copy of the site plan. The said site plan, in fact, shows that the motorcycle had been found entangled in rear portion of the offending vehicle. From this, the tribunal has assumed that the motorcycle would have hit against the truck from its back side. This conclusion is apparently erroneous. The scene of the incident as depicted in the site plan clearly shows that the truck had mowed down the motorcycle in which process the motorcycle rider came to be crushed to death and his vehicle was dragged along to quite a distance ahead. In this view, the finding of contributory negligence and deduction on this account is set aside.

8. It was proved before the tribunal that the deceased was in regular employment with the aforementioned company. His salary certificate shows that his employer would pay him salary and allowance which cannot be said to be fixed. It is inherent in the terms and conditions of the said

employment that the deceased would be earning progressive rise in the income. In these circumstances, exception taken to the element of future prospects being added cannot be accepted.

9. There is merit in the submission of the claimants that the conveyance and medical expenses should not have been deducted. Such allowances were also of value and would correspondingly result in savings and, therefore, have to be factored in.

10. The salary certificate for August, 2013 showed the total emoluments paid to be ₹23180/-. This included ₹4832/- on account of arrears. The arrears being representative of allowances earned in the past will have to be discounted. Thus, the net income of deceased comes to $(23180-4832)$ ₹18348/-. Adding the element of future prospects of increase, notional income to calculate the loss of dependency comes to $(18,348 \times 150/100)$ ₹27,522/-.

11. The deceased was a bachelor and, therefore, per the decision in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, fifty percent (50%) will have to be deducted towards personal and living expenses. This means the net income would come to $(27,522/2)$ ₹13,761/-. It is noted that the first claimant is unmarried sister who was then aged 24 years old, other two elders being married and settled in their respective matrimonial homes. Having regard to the strata of society from which the parties come, it has to be assumed that the deceased would be taking care of customary obligations towards his married sisters as well while rendering support to his junior sibling (unmarried sister). Thus, net

income, after personal deduction may be distributed in the ratio of 3:1:1 amongst them.

12. Having regard to the age of the deceased (28 years), the multiplier of 17 would apply. Therefore, loss to estate is computed as $(8257 \times 12 \times 17)$ ₹16,84,428/-, rounded off to ₹16,85,000/-.

13. The accident had occurred on 13.09.2013. In another similarly placed case where the accident had occurred on 02.09.2013, this court by judgment dated 05.05.2016 (MAC Appeal no.160/2015, *Shri Ram General Insurance Co. Ltd. vs. Usha & Ors.*) had awarded ₹1,50,000/- towards loss of love & affection and ₹50,000/- towards funeral expenses. Adding the said component, the total compensation payable in the case is calculated as $(16,85,000 + 2,00,000)$ ₹18,85,000/-.

14. The award is reduced accordingly.

15. However, 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.

16. By order dated 05.09.2014, the insurer had been directed to deposit the entire awarded amount with accumulated interest within the period specified and out of same 70% was allowed to be released. The balance has been directed to be kept in fixed deposit receipt. The Registrar General shall now calculate the amount payable to the claimants in terms of the modified award and release the balance, refunding the excess in deposit, if any to the insurance company with statutory deposit, if made. In case, the amount

deposited is found to be deficient, the insurer shall be obliged to pay the balance of its liability by requisite deposit with the tribunal within 30 days, making it available to be released.

17. Both the appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 12, 2016
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