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

Date of Decision: 31.05.2016

\+ **MAC.APP. 59/2008**

RAJNI PARIDA & ORS. ..... Appellants
Through: Mr.Nitin Yadav, Adv.

versus

DHARAMPAL SINGH AND ORS. ..... Respondents
Through:

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Bhaskar Chand Parida, then aged 26 years, qualified vocationally trained, employed as junior technician with M/s Leroy Somer & Controls India Pvt. Ltd., suffered injuries in a motor vehicular accident that occurred on 28.08.2004 due to negligent driving of motor vehicle described as Ashok Leyland Container bearing No. HR 38A 4401 (offending vehicle) and died in the consequence. His widow and three other dependent family members (appellants) instituted an accident claim case (Petition No. 1200/2004) on 13.10.2004, seeking compensation under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act), impleading the driver, owner and insurer of the offending vehicle as respondents, they being first to third respondents in appeal.

2. Upon inquiry, by judgment dated 06.09.2007, the tribunal accepted the case that death had occurred due to negligent driving of the offending vehicle. This finding has attained finality as it was not challenged by any appeal. The tribunal awarded compensation in the sum of Rs. 11,68,760/- with interest @ 6% per annum from the date of filing of the petition till realization in favour of the claimants, the said amount inclusive of Rs. 11,48,760/- towards loss of dependency, Rs. 15,000/- towards loss of consortium, love and affection and Rs. 5,000/- towards funeral expenses.

3. Feeling aggrieved, and contending that the compensation that has been awarded is inadequate, the present appeal was filed by the claimants.

4. The appeal was entertained and notice issued by order dated 5th May, 2008. Noticeably, the insurer had appeared on advance notice. Inspite of service, the other respondents did not appear to contest. Though the matter was referred to *Lok Adalat* for amicable settlement, the dispute could not be resolved. At the hearing, none has appeared on behalf of the insurer to assist.

5. Arguments of the appellants have been heard.

6. It is noted that the claimants had proved by certificate (Ex.PW2/1) that the deceased had undergone regular vocational training as an electrician. Sudha Kumar (PW-2), Executive of Human Resources with M/s Leroy Somer & Controls Pvt. Ltd., *inter alia,* on the basis of salary certificate (Ex.PW1/1) that the deceased was employed as Junior technician initially as a temporary employee on 06.03.2000 and was confirmed in service *w..e.f* 01.01.2001. The tribunal found the emoluments earned by him in the said

capacity to be Rs. 9,573/- per month. Though PW-2 referred to growth manual (Ex.PW-2/2) and also deposed about periodic rise in income, the tribunal declined to grant any future prospects of income on the evidence led. It deducted 1/3rd towards personal & living expenses and applied the multiplier of 15 to work out the loss of dependency.

7. Having heard the learned counsel for the claimants and having gone through the record, this Court finds merit in the contention that the evidence on record clearly provided irrefutable evidence showing progressive rise in the income towards future prospects of increase. Since the deceased was a regular employee and was vocationally trained, periodic increase in income by increments was inherent in the terms and conditions of the service. In these circumstances, per dictum in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.,* (2009) 6 SCC 121 , the element of future prospects to the extent of 50% deserves to be added [see judgment dated 28.03.2016 in MAC.APP. 548/2013 *United India Insurance Co. Ltd. v. Kamla & Ors*.] . Since there are four dependent family members deduction on account of personal & living expenses had to be factored in to the extent of 1/4th and having regard to the age (26 years), the multiplier of 17 deserves to be applied. Thus, calculating the loss of dependency is re-calculated as (9573 x 150 ÷ 100 x 3 ÷ 4 x 12 x 17) Rs. 21,97,003/- rounded off to Rs. 21,98,000/-.

8. Following the view taken in Madhu Marwaha & Anr. vs. Dal Chand & Anr. in FAO 102/2001 decided on 1st February, 2016, non-pecuniary damages in the sum of Rs. 50,000/- each towards loss of consortium and loss of love & affection and Rs. 10,000/- each towards funeral expenses and loss

to estate are added. Thus, the total compensation in the case comes to Rs. (21,98,000 + 1,20,000) Rs. 23,18,000/-.

9. 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.

10. Given the apportionment already granted in favour of the other claimants, it is directed that the entire enhanced portion of the compensation including on account of effect of the increase in the rate of interest shall fall to the share of the first appellant (widow) Rajni Parida alone. The insurer is directed to satisfy the award by requisite deposit with the tribunal within 30 days of this judgment.

11. The tribunal shall release the amount payable under the enhanced award by putting it in a fixed deposit in a nationalized bank of the choice of the first appellant for a period of seven years with right to draw monthly interest

(R.K. GAUBA)
JUDGE

MAY 31, 2016
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