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

Date of Decision: 17th May, 2016

\+ **MAC.APP. 455/2013**

NATIONAL INSURANCE CO LTD

..... Appellant

Through Mr. L K Tyagi, Adv.

versus

PUSHPA DEVI & ORS

..... Respondent

Through Mr. Bhupesh Narula, Adv.

\+ **MAC.APP. 1097/2013**

PUSHPA DEVI

..... Appellant

Through Mr. Bhupesh Narula, Adv.

versus

NATIONAL INSURANCE CO LTD & ORS

..... Respondent

Through Mr. L K Tyagi, Adv. for R-1

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 03.01.2011, Shriniwas aged 41 years employed as junior intelligence officer in Intelligence Bureau (Ministry of Home Affairs), Government of India suffered injuries in a motor vehicular accident involving motorcycle bearing No.DL 9SL 2573 (the motorcycle) driven by him and car bearing No.DL3C BC 1050 (the offending vehicle) statedly driven in a negligent manner, it concededly having been insured against third party risk for the period in question with National Insurance Co. Ltd. (appellant in MAC.APP.No.455/2013). His dependent family members (appellant in MAC.APP.No.1097/2013) instituted accident claim case (suit No.119/11) (on 07.03.2011) seeking compensation under Sections 166 & 140 of Motor Vehicles Act, 1988 (MV Act), impleading the insurer, driver and owner of the offending vehicle as respondents. The tribunal held inquiry and, by judgment dated 21.01.2013, upheld the case of negligent driving of the offending vehicle being the cause for the fatal accident. This finding has attained finality. By the said judgment, the tribunal awarded compensation in the sum of Rs.40,49,895/- with interest at 9% per annum calculating it thus:

Loss of dependency	:	*Rs. 39,93,360/-*
Funeral Expenses	:	*Rs. 10,000/-*
Loss of Estate	:	*Rs. 10,000/-*
Loss of Love and Affection	:	*Rs. 25,000/-*
Loss of consortium	:	*Rs. 10,000/-*
Medical Bills	:	*Rs.1535/-*
TOTAL	:	*Rs.40,49,895/-*

2. The insurer, by its appeal (MAC.APP.No.455/2013), seeks reduction in the compensation on the ground that in computing the monthly income, the tribunal wrongly included the amount of ₹2,320/- paid as transport

allowance. *Per contra*, the claimants, by their appeal (MAC.APP.No.1097/2013), submit that not only the transport allowance has been correctly included, there should have been no deduction of the conveyance allowance by ₹850/- per month. The claimants also submit that the non-pecuniary damages which have been awarded on the lower side.

3. Having heard arguments on both sides and having gone through record, this Court is of the opinion that the tribunal fell into error in calculating the monthly income of ₹24,790/- per month by excluding the amount of ₹850/- shown paid towards conveyance allowance as per the pay bill register (Ex.PW2/E). The transport allowance and conveyance allowance would have resulted in corresponding savings to the deceased and they being regular allowances payable to him as part of his terms of engagement in the government service, the entire pay of ₹25,640/- should have been taken as the benchmark.

4. It is noted that ₹3,604/- was paid as income tax during the period 01.04.2010 to 11.01.2011 (Ex.PW1/C), which works out to ₹410/- per month. The monthly income being ₹25,640, the net income, after deducting income tax liability, comes to (25,640 – 410) ₹25,230/-. Since the deceased was in Government service and would be entitled to periodical rise in income, having regard to his age at the relevant point of time, 30% has to be added towards future prospects of increase. Thus, the loss of dependency will have to be worked out on the income of (25,230 x 130 ÷ 100) ₹32,799/-. After deducting $1/4^{th}$ towards personal & living expenses, and applying the multiplier of 14, the total dependency loss is computed as (32,799 x 3 ÷ 4 x 12 x 14) ₹41,32,674, rounded off to ₹41,33,000/-.

5. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, compensation in the sum of ₹1 lakh each on account of loss of love & affection and loss of consortium and ₹25,000/- each towards loss of estate and funeral expense are added besides ₹1,535/- awarded by the tribunal towards medical expenses. The total compensation in the case, thus, is recomputed as (41,33,000 + 2,50,000 + 1,535) ₹43,84,535/- rounded off to ₹43,85,000/-.

6. The award is enhanced accordingly. Needless to add, it shall carry interest as levied by the tribunal.

7. By order dated 20.05.2013, the tribunal had been directed to withhold an amount of ₹4 lakh from the amount realized from the insurance company and release the balance to the claimants. The tribunal shall now release the balance as well to the claimants from out of the amount deposited by the insurance company. The insurance company shall deposit the balance of its liability in terms of the award modified as above with the tribunal within 30 days of this judgment along with interest at 9% per annum within 30 days of this judgment making it available to be released to the claimants.

8. The statutory deposit, if made by the insurer, shall be refunded.

9. The appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 17, 2016/VLD