

\$~R-114

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

Date of Decision: 27.05.2016

+ **MAC.APP. 20/2008**

MAMTA & ORS

..... Appellant

Through None

versus

SAZID ALI & ORS

..... Respondent

Through Mr. Amit Gaur and Mr. Pradeep
Gaur, Advs. for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Harkesh Kumar, aged 26 years, died as a result of injuries suffered in motor vehicular accident that occurred on 10.11.2005, involving negligent driving of van bearing No.DL 5CC 3127 (offending vehicle), admittedly insured against third party risk with the third respondent (insurer) for the period in question. The dependent family members (the appellants) instituted an accident claim case on 20.03.2006 (petition No.415/06) seeking compensation under Sections 166 & 140 of Motor Vehicles Act, 1988 (MV Act) on the averments that the accident had occurred due to negligent driving of the said van by Sazid Ali (first respondent) and it being owned by Nooruddin (second respondent), both were liable jointly and severally to pay the compensation. The insurance company was impleaded on account of insurance policy and its liability to indemnify. After inquiry, by judgment

dated 13.09.2007, the motor accident claims tribunal (tribunal) upheld the case of death on account of negligent driving of the offending vehicle. It awarded compensation in the sum of ₹6,44,141.80, which included ₹80,000/- towards loss of love & affection and ₹20,000/- towards funeral expenses besides ₹5,44,141.80 calculated as loss of dependency. It was directed to be paid with interest at 7.5% per annum.

2. The appellant filed the present appeal submitting grievance that the compensation awarded is inadequate.

3. The appeal was admitted and put in the category of regular matters. During the pendency of the appeal, on their request, the appellants were allowed liberty to lead additional evidence under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC). They examined Trilok Chand (A1W1) and Anand (A1W2) primarily to bring home the facts that the deceased was running a automobile workshop in the name and style of “Jagdamba automobiles” earning ₹25,000/- to ₹30,000/- per month.

4. At the final hearing, however, no one appeared for the claimants/appellants to assist. The arguments of the counsel for the insurer (third respondent), who only appears have been heard.

5. It is noted that the claimants had relied upon, before the tribunal, income tax returns (ITRs) for the assessment years 2004-05 (Ex.PW5/2) and 2005-06 (Ex.PW5/3). The tribunal had some reasons to suspect the said ITRs. It observed that it had called upon the claimants to submit the copy of the *challan* but the same was never filed. It was observed in the impugned judgment (para 12) that the purpose of calling for the *challan* was to

ascertain whether the returns had been submitted by the deceased himself and whether he had paid the income tax or not.

6. In the considered view of this Court, the reasons set out in the impugned judgment for rejecting ITRs (Ex.PW5/2 and PW5/3) were not correct. The tribunal failed to take note of the fact that in the latter return, the claimant had declared that there was no tax payable and, thus, no tax had been paid. The ITRs clearly show that they had been filed during the lifetime of the deceased on 05.05.2005 and 29.07.2005. There was, therefore, no reason to disbelieve the said ITRs. Even otherwise, in the face of the additional evidence led under Order 41 Rule 27 CPC during the pendency of this appeal, the evidence about the income tax returns deserves to be believed.

7. The ITRs show that the deceased had declared an income of ₹56,570/- from business during the assessment year 2004-05. Similarly, he had declared an income of ₹90,350/- for the assessment year 2005-06. In the face of these declarations, the claim about income at a higher level as sought to be brought on record through additional evidence led during appeal cannot be believed.

8. The evidence about the income declared in the ITRs as mentioned above, however, should have been accepted. The loss of dependency is, therefore, calculated afresh on such basis.

9. The ITRs for the two years clearly show progressive rise in the income. With such irrefutable evidence on record, the element of future prospects of increase to the extent of 50% deserves to be granted. Thus, the

income for calculating the loss of dependency is worked out as $(90,350 \times 150 \div 100)$ ₹1,35,525/- per annum. Since there are six claimants (the appellants), $1/4^{\text{th}}$ is deducted towards personal & living expenses. In view of the age of the deceased (26 years), the multiplier of 17 applies. Thus, the loss of dependency is calculated as $(1,35,525 \times 3 \div 4 \times 17)$ ₹17,27,944/- rounded off to ₹17,28,000/-.

10. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (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. Thus, the total compensation payable in the case is computed as $(17,28,000 + 2,50,000)$ ₹19,78,000/-.

11. 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.

12. The tribunal had awarded specific shares in the compensation to children leaving the rest to the widow. Since the award has been modified, the entire enhanced portion of the compensation with effect of increase of interest shall be payable to the widow alone. The insurer is directed to deposit the entire enhanced portion of the award with the tribunal within 30 days to make it available to be released to the claimant (first appellant). The amount payable under the enhanced award, upon being deposited, shall be released after being invested in a fixed deposit receipt in a nationalized bank

of the choice of the claimant (widow) in her name for a period of 10 years with right to draw monthly interest.

13. The appeal is disposed of in above terms.

14. The Registry shall send copy of the judgment to the appellants (claimant) by registered post at their address.

MAY 27, 2016
VLD

(R.K. GAUBA)
JUDGE

