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

Date of Decision: 27.05.2016

+ **MAC.APP. 39/2008**

TRILOK CHAND & ORS.

..... Appellants

Through : None.

Versus

SAJID ALI & ORS.

..... Respondents

Through: Mr. Pradeep Gaur & Mr. Amit Gaur,
Advs.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 10.11.2005, a motor vehicular accident occurred on account of negligent driving of Van No. DL 5CC 3127 (offending vehicle), admittedly insured against third party risk with National Insurance Company Ltd. (insurer) for the period in question, it resulting in death of Dharmender, a bachelor, aged 23 years. His parents (appellants) instituted accident claim case (Petition No. 414/2006) on 20.03.2006 seeking compensation under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act). In the said proceedings, besides the insurer Sajid Ali (first respondent) and Nooruddin (second respondent) were also impleaded as parties on the averment that they were driver and owner respectively of the offending vehicle. It was alleged that accident was caused due to negligent driving of the same by the

first respondent. This plea was upheld by the tribunal, upon inquiry, by judgment dated 13.09.2007. The tribunal granted compensation in the sum of ₹ 4,09,253.60 with interest @ 7.5% per annum in favour of the claimants, the said amount being inclusive of ₹ 20,000/- towards funeral expenses, ₹ 60,000/- towards loss of love & affection and ₹ 3,29,253.60 towards dependency loss.

2. The appeal at hand was filed submitting grievance that the compensation awarded and the rate of interest (7.5% per annum) is inadequate.

3. This appeal was admitted and directed to be shown in the list of regulars. At the hearing, however, neither the claimants nor their counsel would appear. There is no reason why the hearing on the appeal, which is one of the oldest on board of this Court, should be deferred yet again.

4. Before the tribunal it had been claimed that the deceased was earning his livelihood working for gain with M/s Jagdamba Automobiles and also to help out his father (first appellant) in cultivation. The claimants pleaded that the deceased was earning ₹ 5,000/- per month. The evidence adduced by the claimants, however, was not accepted by the tribunal in absence of any corroboration. The tribunal, instead opted to calculate the loss of dependency on the basis of minimum wages (₹ 3165.90/-) of unskilled worker.

5. During the pendency of this appeal, on their application, the claimants were granted opportunity to lead further additional evidence under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC) availing which Trilok Chand (A1W1) and Anand (A1W2) were examined. The sum and substance of the evidence led before the tribunal, and the additional evidence brought

on record during the pendency of this appeal, is that the deceased was working for gain with his brother Harkesh Kumar in running the business of automobiles repairs in the name and style of Jagdamba Automobiles. It may be mentioned here that Harkesh Kumar had died in the course of the same accident and similar petition had been brought by his widow and other dependent family members including the claimants in the present case. In the case of claim arising out of death of Harkesh Kumar, which gave rise to MAC Appeal No. 20/2008, which has been decided by a separate judgment of this Court passed today, income tax returns (ITRs) submitted by Harkesh Kumar were placed on record as evidence. The said ITRs were disbelieved by the tribunal in the judgment rendered in that context in the other case (Petition No. 415/2006). By the judgment passed by this Court on appeal (MAC Appeal No. 20/2008), the said ITRs have been accepted as cogent proof of the earnings of Harkesh Kumar. In the present case, however, such evidence is not forthcoming. Mere production of some invoices, or stickers or bill books concerning Jagdamba Automobiles cannot prove that the deceased was earning ₹ 5,000/- per month as was claimed. Unlike the case of Harkesh Kumar, no income-tax returns are shown to have been furnished by Dharmender Kumar. In these circumstances, the view on income taken by the tribunal cannot be faulted.

6. It is, however, noted that the non-pecuniary damages awarded and the rate of interest levied are inadequate. In lieu of the non-pecuniary damages awarded by the tribunal ₹1,00,000/- is awarded towards loss of love & affection and ₹ 25,000/- each is added towards loss to estate and funeral expenses. This would result in net increase in the award by ₹ 70,000/-.

7. 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.

8. The award is modified accordingly. Given the amount earlier awarded by the tribunal, it is directed that the entire enhanced portion of the award including on account of increase in the rate of interest shall be payable to the second claimant (mother Omwati) only.

9. The insurer (third respondent) is directed to pay the enhanced compensation including on account of increase in the rate of interest by requisite deposit with the tribunal within 30 days whereupon the same shall be released to the second appellant (Mother Omwati), it being put in fixed deposit receipt in her name in a nationalized bank of her choice for a period of five years, with right to draw monthly interest.

10. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 27, 2016
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