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

Date of Decision: 23.05.2016

\+ MAC.APP. 855/2014 and CM No.15436/2014

NATIONAL INSURANCE CO LTD ..... Appellant

Through: Ms. Shantha Devi Raman, Advocate

versus

SHEELA DEVI & ORS ..... Respondents

Through: Mr. Anshuman Bal, Adv. for R-1 to 5

\+ MAC.APP. 955/2015

SHEELA DEVI & ORS ..... Appellants

Through : Mr. Anshuman Bal, Advocate

versus

NATIONAL INSURANCE CO. LTD & ANR ..... Respondents

Through: Ms. Shantha Devi Raman, Advocate

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Virender Singh, aged 59 years, employed as a constable in UP Police, died as a result of injuries suffered in a motor vehicular accident that

occurred on 07.10.2011 statedly due to negligent driving of a vehicle bearing registration no.HR-51W-2716 (offending vehicle), admittedly insured against third party risk with the National Insurance Co. Ltd. (appellant in MAC 855/2014) for the period in question. His wife and children (appellants in MAC 955/2015) instituted an accident claim case (MAC 36/12) on 27.02.2012 seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988 (M.V. Act), impleading the driver / owner and insurer of the offending vehicle as respondents.

2. On inquiry, by judgment dated 31.07.2014, the Motor Accident Claims Tribunal (tribunal) upheld the case about death having occurred due to negligent driving of the offending vehicle. This finding has attained finality as it was not further challenged.

3. By the award granted in the impugned judgment, compensation in the sum of Rs.24,49,554/- was ordered to be paid with interest at the rate of 9% p.a. in favour of the claimants by the insurer.

4. The insurer is in appeal submitting that since the tribunal found that the second claimant is a major son and third to fifth respondents are married daughters, none of them being dependents, the loss of dependency should have been computed in favour of the wife (first claimant) after deducting 50% towards personal and living expenses. It is also submitted that the deceased was to superannuate from the service of UP Police after six months of the date of accident wherein he died. On the basis of this fact, it is argued by the insurer that the loss of dependency post the attainment of the age of 60 should have been calculated on the notional income equivalent to pension which he would be earning.

5. *Per contra*, the claimants by their appeal submit that the deduction on account of income tax in the sum of Rs.11,691/- from the annual income of Rs.3,66,912/- was improper. Relying on *Vimal Kanwar and Ors. vs. Kishore Dan and Ors., 2013 (3) TAC 6 (SC)*, it is argued by the claimants that since the salary certificate (Ex. PW2/3) did not disclose the deduction of tax at source, no deduction on this account should have been made before calculating the loss of dependency. This argument is unmerited. When the gross income is known to the tribunal, the income tax liability can be properly calculated. There is no reason why the deduction on that account should not be made in accordance with the dictum in *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121.

6. The submission of the insurance company about splitting up of the multiplicand is based on a decision of a learned single Judge of the High Court of Gauhati in a case reported as *New India Assurance Co. Ltd. Vs. Numali Saikia and Ors., 2011 (1) ACC 273*. Having regard to the method of calculation of loss of dependency in *Sarla Verma* (supra), the said ruling does not commend itself to this court. Since the death had occurred while the deceased was still in Government service, there is no reason why the calculation of loss of dependency be made in the manner suggested.

7. There is, however, substance in the argument of the insurance company as to the deduction on account of personal and living expenses. Having returned a finding on fact that all the four children were not financially dependent, the only dependent being the wife, deduction on account of personal and living expenses had to be made to the extent of 50%. Thus, the loss of dependency on the multiplier of 9 is made afresh and

is re-computed as (Rs.3,55,221/2 x 9) Rs.15,98,495/-, rounded off to Rs.15,99,000/-.

8. The tribunal awarded ₹1 Lakh each towards loss of love and affection and loss of consortium, ₹25,000/- towards funeral expenses and ₹10,000/- towards loss to estate. Following the view taken in Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, the award on account of loss to estate is increased to ₹25,000/-.

9. Adding the amount of ₹83,228/- towards medical expenses which was not reimbursed, the total compensation in the case is re-calculated as (₹15,99,000/- + ₹2,50,000/- + ₹83,228/-) ₹19,32,228/- rounded off to ₹19,33,000/-.

10. The award is modified accordingly. Needless to say, it shall carry interest as levied by the tribunal.

11. The tribunal had apportioned the award by specifying the amount falling to the share of the claimants. By order dated 23.09.2014, the insurance company had been directed to deposit the entire awarded amount with accumulated interest with the Registrar General of this court within the period specified and upon such deposit being made, 60% was allowed to be released in terms of the impugned judgment, the balance to be kept in fixed deposit receipt with the UCO Bank, Delhi High Court Branch, New Delhi for a period of one year with provision for renewal.

12. Since the amount of compensation has been reduced, it is directed that the amounts already released in favour of the second to fifth respondents /

claimants (children of the deceased) shall be treated as their respective shares, the entire balance now to be paid to go to the first claimant (widow) alone.

13. The Registrar General shall calculate the amount payable under the modified award and release the same from the balance, refunding the excess, if any, with statutory deposit if made, to the insurer.

14. Both appeals and the pending application are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 23, 2016
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