

\$~8 & 10

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

Date of Decision: 18.05.2016

+ MAC.APP. 980/2013

RUCHIKA ARORA & ORS

..... Appellants

Through: Mr.Nitin Sehgal, Advocate

versus

VINOD KUMAR & ORS

..... Respondents

Through: Ms. Rakhi Dubey, Advocate for R-3

+ MAC.APP. 1071/2013

NATIONAL INSURANCE CO LTD

..... Appellant

Through: Ms. Rakhi Dubey, Advocate

versus

RUCHIKA ARORA & ORS

..... Respondents

Through: Mr.Nitin Sehgal, Adv. for R-1 to 4

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Sumit Arora, then aged 3 months more than 35 years (born on 15.12.1977), engaged in a business of electronics, suffered injuries in a

motor vehicular accident that occurred on 28.03.2013 involving negligent driving of a motor vehicle bearing registration no.DL-1VA-9723 (offending vehicle) and died in the consequence. His widow, children and widowed mother (appellant in MAC 980/2013) instituted an accident claim case (suit no.228/2013) on 26.04.2013 impleading the driver and owner of the offending vehicle as parties, in addition to National Insurance Co. Ltd. (appellant in MACA 1071/2013), it admittedly having issued an insurance policy covering third party risk for the period in question respecting the offending vehicle.

2. Upon inquiry, by judgment dated 16.08.2013, the Motor Accident Claims Tribunal (tribunal) upheld the case of the claimants that death had occurred due to negligent driving of the offending vehicle. This finding has since attained finality as there was no further challenge thereto.

3. By the aforementioned judgment, the tribunal awarded compensation in the sum of ₹50,37,200/- with interest at the rate of 9% p.a. from the date of filing of the petition in favour of the claimants. The said award included ₹1 Lakh each towards loss of consortium and loss of love and affection, ₹10,000/- towards loss to estate, ₹25,000/- towards funeral expenses, balance ₹48,02,135/- representing the loss of dependency.

4. The claimants are in appeal (MAC 980/2013) submitting that the dependency loss has been wrongly calculated on the multiplier of 15, assuming the age of the deceased as 36 years and thus the age-bracket of 31-35 as per prescription in *Sarla Verma Vs. DTC*, 2009 6 SCC 121 should have been invoked and the multiplier of 16 applied.

5. The insurer, on the other hand, argues on its appeal (MACA 1071/2013) that the tribunal fell into error by adding the component of 50% of future prospects of increase stating that the progressive rise in income could not have been inferred only on the basis of the two income tax returns (ITRs). It is also submitted that the tribunal assessed the income by drawing an average on the basis of ITRs for three consecutive assessment years (i.e. 2011-2012, 2012-2013 and 2013-2014) ignoring the fact the third ITR (i.e. for the assessment year 2013-2014) had been filed after the death. It is also the contention of the insurance company that there has been no complete loss of income for the dependent family members in as much as the deceased was in partnership with his brothers in the business of electronics and, after his death, per the investigation done by the insurer, his family is still receiving rental income for the premises in use.

6. Arguments have been heard on both sides and the record perused.

7. The last contention of the insurance company may be taken up first. It needs to be only noted and rejected for two reasons. First, the insurer did not lead any evidence to show the rental income. Second, even if the family is receiving rental income against the premises in use by the brothers for their business, the same would have no effect whatsoever as the ITRs only spoke of the income from business.

8. There is merit, however, in the submission that the ITR for 2013-2014 (Ex. PW1/3) should not have been acted upon as the same were filed after the death. It cannot be believed in absence of further corroborative proof also for the reason that it shows unduly high income as compared to the ITRs for the previous two assessment years.

9. In the given facts and circumstances, instead of drawing an average, the last ITR furnished by the deceased (for the assessment year 2012-2013) should have been taken as the correct benchmark. At the same time, it cannot be ignored that the comparison even of the two ITRs (i.e. for the assessment year 2011-2012 and 2012-13) indicates that the income from the business was on progressive rise. With such irrefutable evidence available on record, the element of future prospects of increase should not be grudged by the insurer. [see judgment dated 28.03.2016 in MAC.APP. 548/2013 *United India Insurance Co. Ltd. v. Kamla & Ors.*]

10. Following the *dictum* in *Sarla Verma* (supra), and having regard to the age of the deceased, the assessment of loss of dependency is made on the income declared for the assessment year 2012-2013 with an element of 50% on future prospects of increase factored in. Since the number of dependants was four, $1/4^{\text{th}}$ is deducted towards personal and living expenses. Applying the multiplier of 16, which would be appropriate given the age of the deceased, the loss of dependency is recomputed as $(\text{₹}2,62,711/- \times 150/100 \times 3/4 \times 16) \text{₹}47,28,798/- \text{₹}47,29,000/-$.

11. It is noted that the accident had occurred on 28.03.2013. Following the view taken by this court in MACA 160/2015, *Shriram General Insurance Co. Ltd. Vs. Usha & Ors*, decided on 05.05.2016, awards of ₹1,50,000/- each towards loss of consortium and loss of love and affection and ₹50,000/- each towards loss of estate and funeral expenses are added. Thus, the total compensation in the case comes to $(\text{₹}47,29,000/- + 1,50,000/- + ₹1,50,000/- + ₹50,000/- + ₹50,000/-) \text{₹}51,29,000/-$. Needless to add, it

shall carry interest as levied by the tribunal. It shall be apportioned in the manner ordered by the tribunal in the impugned judgment.

12. The award is modified accordingly.

13. By order dated 22.11.2013 in MACA 1071/2013, insurance company had been directed to deposit 80% of the awarded amount within the period specified whereupon 50% was allowed to be released, balance kept in fixed deposit receipts with the UCO Bank, Delhi High Court Branch, New Delhi for a period of six months to be renewed periodically. Since the award has been increased, the balance lying in deposit shall be released forthwith to the claimants. The insurer shall be obliged to pay the balance of its liability. It shall do so by making requisite deposit with the tribunal within 30 days making it available for being released to the claimants.

14. Statutory deposits, if made, shall be refunded.

15. Both appeals (and the pending applications) are disposed of in above terms.

16. *Dasti*, as prayed, to both sides.

R.K. GAUBA
(JUDGE)

MAY 18, 2016
yg