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

Date of Decision: 09.05.2016

\+ MAC.APP. 877/2014 and CM No.16105/2014

NATIONAL INSURANCE CO LTD ..... Appellant

Through: Mr. Sanjay Rawat, Advocate

versus

BHAGIRATH & ORS ..... Respondents

Through: Mr. R.R. Ahlawat, Adv. for R-5&6

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Panchi Devi, wife of the first respondent and mother of the second to fourth respondent (collectively, claimants) died as a result of the injuries suffered in a motor vehicular accident that occurred on 30.10.2011 involving the negligent driving of a Santro car bearing registration no.HR-07F-6074 (offending vehicle) which was admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question.

2. On the accident claim petition (case no.697/2014) being preferred by the claimants on 20.12.2011, the Motor Accident Claims Tribunal (tribunal)

held inquiry and on that basis, by judgment dated 25.06.2014, upheld the case that death had occurred due to the negligent driving of the offending vehicle which finding has attained finality as it was not challenged.

3. By the said judgment, the tribunal awarded compensation in the sum of ₹7,39,328/- with interest in favour of the claimants, calculating it thus :

1.	Loss of dependency	₹4,19,328/-
2.	Loss of consortium	₹1,00,000/-
3.	Funeral charges	₹25,000/-
4.	Loss of estate	₹10,000/-
5.	Loss of love and affection	₹1,00,000/-
6.	Reimbursement of medical bills	₹85,000/-
	TOTAL	₹7,39,328/-

4. The insurer who was asked to satisfy the award is in appeal questioning the computation on the ground that the deceased was a house wife and therefore, the method of calculating the loss of dependency is improper. It is noted that the tribunal assumed the income of the deceased at ₹6,656/- it being the amount of minimum wages payable to unskilled worker on the date of the accident. This approach cannot be faulted. The tribunal found on the basis of election identity card (Ex. PW1/4) that the deceased was 63 years old in 2009. This would mean her age at the time of accident was 65 years, and so the tribunal applied the multiplier of 7 and rightly so, in view of the judgment in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.,* (2009) 6 SCC 121.

5. The tribunal calculated the loss of dependency by deducting 1/4th towards personal and living expenses. This was erroneous. All the three

children (second to fourth respondents) having turned major, cannot be said to be financially dependent upon the deceased. In these circumstances, deduction to the extent of 50% should have been made.

6. Therefore, the dependency loss is recomputed as (₹6656 / 2 x 12 x 7 ₹2,79,552/-), rounded off to ₹2,80,000/-. The award under the other heads of compensation as granted by the tribunal cannot be faulted. In the result, the total compensation payable in the case comes to (₹2,80,000/- + ₹1,00,000/- + ₹25,000/- + ₹10,000/- + ₹1,00,000/- + ₹85,000/-) ₹6,00,000/-.

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

8. By order dated 24.09.2014, 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, from which 50% was allowed to be released to the claimants, the balance kept in fixed deposit receipts. Since the award has been reduced, it is directed that the entire amount already released to the second to fourth respondents shall be treated as their share in the compensation awarded, the entire balance being payable to the first respondent (husband) alone.

9. The statutory amount, if deposited, shall be refunded.

10. The appeal and the pending application are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 09, 2016
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