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

Date of Decision: 23.05.2016

+ **MAC.APP. 889/2014 and CM No.16394/2014**

THE NEW INDIA ASSURANCE CO.LTD Appellant

Through: Mr. R.K. Tripathi, Advocate

versus

SANJEEV JAIN & ORS Respondents

Through: Ms. Hreeshika Bhargava, Adv. for R-1
to 3

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Seema Jain, aged 44 years, self employed statedly earning her livelihood from tutorial work died as a result of injuries suffered in a motor vehicular accident that occurred on 29.09.2013 involving negligent driving of a motor vehicle bearing registration no.DL-1LL-9302 (offending vehicle), admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question. On their claim petition (registered on the basis of a detailed accident report no.D 435/13 on 26.10.2013), the Motor Accident Claims Tribunal (tribunal) awarded compensation in the sum of ₹24,01,780/- with interest at the rate of 9% p.a.

in favour of the first to third respondents (claimants) directing the insurer to pay.

2. The insurer is in appeal and questions the calculation of loss of dependency on the ground it has been wrongly computed with the element of 30% of future prospects of increase.

3. Having heard both sides and having gone through the tribunal's record, this court finds no error committed by the tribunal in the calculation of loss of dependency. The tribunal had considered the evidence and has reached the appropriate conclusion thus : -

"..10. The PW-1, the petitioner no.1 stated that deceased was self employed and was 46 years of age and was running tuitions / coaching center and was earning ₹2,57,000/- per annum. The PW-1 stated that the deceased left behind two children besides the petitioner no.1. The PW-1 exhibited his Aadhar card as Ex. PW-1/1, Aadhar card of Seema Jain as Ex. PW-1/2, Aadhar card of Arpit Jain as Ex. PW-1/3, Aadhar Card of Prachi Jain as Ex. PW-1/4, Pan card of Seema Jain as Ex. PW-1/5, dead body receipt as Ex. PW-1/6, driving licence of Ms. Seema Jain as Ex. PW-1/7, death certificate as Ex. PW-1/8, educational documents of Seema Jain as Ex. PW-1/9, detailed accident report as Ex. PW-1/10, income tax returns for the assessment years 2012-13, 2011-12, 2010-11, 2009-10 and 2008-09 as Ex. PW-1/11 (collectively). During cross-examination the PW-1 stated that he did not have any document to show that his wife was running any tuitions center and did not have any document regarding charging of tuitions fee from the students.

11. The PW-2, Sh. Joginder Singh, Tax Assistant, Income Tax Department produced the income tax returns for the assessment year 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13 as Ex. PW-2/1 (colly).

12. I have gone through the material on record. The petitioner has placed on record computation of income and tax return for the assessment year 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13, Ex. PW-1/11. The computation for the assessment year 2008-09 shows that deceased was having gross income of ₹1,85,312/-. The gross income includes the income from house property of ₹72,000/-. The interest income which is accruing from Bank, FDR and income from house property cannot be considered for calculating the compensation as the petitioners will continue to get the said amount. Therefore, the income for the assessment year 2008-09, comes to ₹1,34,912/-. The computation of assessment year 2009-10, 2010-11, 2011-12 and 2012-13 shows gross income of ₹2,54,181/- respectively. Similarly, after deduction of rental income from house property and interest on savings, the income for respective years comes to ₹1,47,526/-, ₹1,53,717/-, ₹1,63,223/- and ₹1,78,581/-.

13. Under the facts and circumstances, income, as per the ITR for the assessment year 2012-13 (last ITR), can be taken into consideration for calculating the compensation. It shows income of ₹1,78,581/-.

x x x

16. In the present case as noted above, the yearly income of the deceased at the time of death is taken to be ₹1,78,581/- per annum. The deceased was 44 years of age (as per PAN Card, Ex. PW-1/5). Adding 30% of the amount, the annual income of the deceased comes to ₹2,32,155/- (₹1,78,581/- + ₹53,574/-).

17. The petitioner no.1 is the husband of the deceased and failed to show that he was having no source of income. The petitioner no.2 is 18 years of age and petitioner no.3 is 16 years of age and stated to be dependent. No evidence in rebuttal is led by insurance company. Therefore, there are two dependents on the income of the deceased i.e. petitioner no.2 and 3. Interest of justice in the present case would be met if $1/3^{\text{rd}}$ i.e. ₹77,385/- is deducted as the personal and living expenses of the deceased. After such deduction, the contribution to the family (dependents) is determined as ₹1,54,770/- per annum. The multiplier

applicable would be 14 having regard to the age of the deceased i.e. 44 years (as mentioned in PAN card, Ex.PW-1/5) at the time of the death. Therefore, the total loss on dependency would be ₹1,54,770/- x 14 = ₹21,66,780/-...”

4. Having regard to the irrefutable evidence brought on record showing progressive rise in the income from the business, the element of future prospects of increase cannot be grudged. [see judgment dated 28.03.2016 in MAC.APP. 548/2013 *United India Insurance Co. Ltd. v. Kamla & Ors.*]

5. It is noted that the tribunal has awarded ₹1 Lakh each towards loss of love and affection and loss of consortium besides ₹ 10,000/- towards loss of estate and ₹25,000/- towards funeral expenses. It is pointed out by the counsel for the claimants that the accident had occurred on 29.09.2013. In a case of similar vintage, decided as MACA 160/2015, titled: *Shri Ram General Insurance Co. Ltd. Vs. Usha and Ors.*, this court by judgment dated 05.05.2016, awarded ₹1,50,000/- each towards loss of love and affection and loss of consortium and ₹50,000/- each towards funeral expenses and loss to estate. Similar awards are made in this case in lieu of the amounts granted by the tribunal under the non-pecuniary heads of damages.

6. Thus, the total compensation in the case stands enhanced by ₹1,65,000/-. Needless to say, it shall carry interest as levied by the tribunal. The enhanced portion of the compensation with corresponding interest shall fall to the share of the first claimant (first respondent).

6. By order dated 29.09.2014, 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 out of such deposit, 70% was allowed to be released, the balance kept in fixed deposit receipt with the UCO Bank, Delhi High Court Branch, New Delhi. The balance shall also now be released to the claimants. The insurance company shall pay the remainder of its liability under the modified award by requisite deposit with the tribunal within 30 days making it available to be released.

7. The statutory deposit, if made, shall be refunded after it is confirmed that the award has been satisfied.

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

MAY 23, 2016

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(R.K. GAUBA)
JUDGE

