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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 18th February, 2016

+ MAC.APP. 636/2009

ORIENTAL INSURANCE CO LTD Appellant

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

versus

REKHA VASHISHT & ORS Respondents

Through: Mr. B.S. Randhawa, Adv.for R-1 to 5.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. A claim petition had been filed under Section 166 of Motor Vehicles Act, 1988 (the MV Act) on 18.10.2005 before the motor accident claims tribunal (the tribunal), registered as suit no.06/2008 (2005), seeking compensation on account of death of Naresh Kumar in a motor vehicular accident that occurred on 29.07.2005 at about 07:00 AM in a collision against scooter no.DL-4SAF-2172 (the scooter) driven by him, on one hand, and water-tanker bearing registration no.DL-1GA-0981 (the offending vehicle) on the other hand, in the area of Dabri More, Delhi. The claimants are first to fifth respondents in the appeal at hand. In the claim petition, they had impleaded the driver Sadir Hussain, the first respondent (sixth respondent in the appeal) and Lalit Kumar, owner of the offending vehicle as second respondent (seventh respondent in the appeal). The appellant insurance company was also impleaded (as third respondent) in the claim

petition, it concededly having issued an insurance policy in respect of the offending vehicle against third party risk for the period in question.

2. The tribunal, after notice to all the respondents, held inquiry and awarded compensation in the sum of ₹74,86,000/- with interest at the rate of nine percent per annum from the date of filing of petition till realization. The said amount of compensation included ₹73,31,000/- towards loss of dependency, ₹1,25,000/-, towards loss of love & affection and ₹10,000/- each under the non-pecuniary heads of loss of consortium, loss of estate and funeral expenses respectively.

3. The insurance company, feeling aggrieved, preferred appeal at hand under Section 173 of the MV Act questioning the calculation of compensation on account of loss of dependency raising three contentions; viz. that the special catering allowance added in the income of the deceased was variable which could not be said to be a fixed or regular income nor part of the conditions of service and, thus, could not have been considered; the element of future prospects to the extent of fifty percent (50%) increase had been wrongly added ignoring the fact that the deceased, born on 05.01.1965, was 40 years and 6 months old when the death occurred and, therefore, having regard to the dictum in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, such element only to the extent of thirty percent (30%) should have been factored in; and, multiplier of 15 adopted by the tribunal was erroneous, since according to the insurance company, the multiplier of 14 would have been more appropriate, having regard to the view taken by a learned single judge of this court in MAC

appeal no.379/2004 *Delhi Transport Corporation vs. Suntia & Ors.* decided on 07.08.2012.

4. During the pendency of the appeal of the insurance company, the claimants came up with cross-objections (CM APPL.5902/2016) which were submitted on 05.02.2016 with applications for delay in filing and refilling (CM APPL.5904/2016 & 5903/2016) seeking the condonation of delay.

5. Arguments have been heard at length and with the assistance of both sides, record has been perused.

6. Though delay in filing of cross-objections has not been properly explained and there is no just or sufficient reason to condone it, in as much as it is not believable that the cross-objections had actually been prepared in the year 2010 as is contended for the simple reason that the application filed itself indicates that it was prepared only in the year 2016, the contentions urged in the cross-objections seeking enhancement of compensation are nonetheless being considered since the issue of compensation on account of loss of dependency is still at large, the computation by the tribunal having been questioned by the insurance company in its appeal.

7. The tribunal, in its judgment, took note of the salary and allowances received by the deceased in the month of April 2005 on account of his employment as Guest Service Supervisor in Indian Hotels Company Ltd. with posting at Taj Palace Hotel, Sardar Patel Marg, New Delhi. The emoluments shown by documentary proof include one described as “S.C.P.OUT”, which has been explained to mean “special catering allowances”, the amount receivable on monthly basis being admittedly

variable and not fixed since it would depend upon the quantum of the catering business undertaken by the hotel and the number of functions organized in a particular month, share of each of employees (including the deceased) being worked out on such basis. The tribunal noted that it was a perquisite paid to the deceased for his benefit and on account of services rendered. Since the amount was found, from the document produced, to be variable, the tribunal proceeded to draw an average on the basis of figures for the period April 2004 to August 2006 (17 months) as had been presented. The said document showed that the total of the special catering allowances received by the deceased during the corresponding period was ₹5,32,525/-. It being an amount received over the period of 17 months, the tribunal proceeded to assume ₹31,324/- as the average income under the said head. On the basis of these calculations, it worked out the monthly income at ₹42,471/- inclusive of the special catering allowances of ₹31,324/-

8. The insurance company in appeal questions the above-said addition of the special catering allowances for the reasons noted above. On the other hand, the claimants, in their cross-objections, submit that it was not correct on the part of the tribunal to draw the average on the basis of the salary and allowances for a period of 17 months and that either the last salary drawn should have been adopted as the benchmark or the average of the preceding four months should have been taken into account. The learned counsel for the claimants submitted that, if thus calculated on the basis of document (Ex.PW4/B), the salary of the deceased would be in the range of ₹60,000-65000/-.

9. Having considered the rival submissions on the above score, the contentions of both sides seem to be devoid of merits. It is clear from the documentary proof adduced that the special catering allowances was received by the deceased on regular basis. It was accordingly part of the terms and conditions of the service in the hospitality industry where the deceased was working for gain. The amount may have varied from month to month depending on the business undertaken by the employer/hotel but the variation in the allowances from month to month by itself does not mean that it cannot be treated as part of the income. It remains part of the income earned by the deceased as a regular employee of the hotel in question. Therefore, there is nothing wrong in it being factored in, as part of the income on the basis of which loss of dependency had to be computed.

10. The variation in receipts of the special catering allowances over the period immediately preceding the death itself justified the approach adopted by the tribunal. There is no reason why the last salary should be taken as the benchmark or for the period to draw average to be restricted to four months only. The claimants themselves had shown the record of receipts over the period of 17 months. Larger the period the more accurate the calculation would be.

11. Thus, the objections of both sides on above score are rejected.

12. The tribunal deducted the tax liability and, thus, reached the figure of ₹36,200/- as the net income of the deceased. It is on the said amount that the element of future prospects to the extent of fifty percent (50%) was added. Though the claimants through PW3 testified that the age of the

deceased was 39 years on the date of his death, this was apparently incorrect as the PAN card (Ex.PW3/P) revealed the date of birth of deceased as 05.01.1965. Thus, on the date of death (29.07.2005), he was 40 years and more than 6 months old. In *Sarla Verma* (supra), the Supreme Court directed the future prospects in cases the age of the deceased is more than 40 years but less than 50 years, to be 30%. Therefore, there is no justification for the addition of future prospects to the extent of fifty percent (50%) as done by the tribunal. The element of future prospects has to be reduced to thirty percent (30%) and, thus, the average gross income of the deceased for working the loss of dependency is calculated as ₹47,060/-.

13. The tribunal deducted one fourth of the said income on account of personal and living expenses and given the number of dependants, rightly so. In this view, the loss of dependency comes to $(47060 \times 3/4)$ ₹35,295/- per month.

14. Since the age of the deceased at the time of death was more than 40 years and six months, the issue raised is as to whether he is to be bracketed in the age group of 36-40 or age group of 41-45, from out of the table mentioned in (para 42 of) the judgment in *Sarla Verma* (supra). Faced with the similar fact situation, a learned single judge of this court, in the case of *Delhi Transport Corporation vs. Sunita & ors.* (supra) took the view that the multiplier has to be adopted in accordance with the nearest slab of age group as mentioned in *Sarla Verma* (supra). This approach seems to be correct in as much as it takes care of the grey area occurring on account of lack of clarity in the table given.

15. Adopting the said approach, this court finds that the deceased being more than 40 years and 6 months old, for purpose of adopting multiplier his age needs to be rounded off to 41 years and, thus, appropriate multiplier would be 14.

16. In view of above, loss of dependency is recomputed at $(35295 \times 12 \times 14)$ ₹59,29,560/-, rounded off to Rs.59,30,000/-.

17. By way of cross-objections, the claimants also submit that the awards on account of loss of consortium, loss of estate and funeral expenses are on the lower side. In similarly placed case reported as *Rajesh & Ors. vs. Rajbir & Ors.*, (2013) 9 SCC 54, the Hon'ble Supreme Court awarded ₹1,00,000/- each on account of loss of consortium and loss of love & affection besides funeral expenses at ₹25,000/-. In *Shashikala vs. Gangalakshamma* (2015) 9 SCC 150, similar approach was taken and ₹25,000/- was added towards loss of estate.

18. In above view, the award of non-pecuniary damages indeed requires reconsideration. Thus, instead of the non-pecuniary damages awarded by the tribunal in the impugned judgment, it is directed that the claimants shall be entitled to receive ₹1,00,000/- each on account of loss of love & affection and loss of consortium and ₹25,000/- each on account of loss of estate and funeral expenses respectively.

19. Adding the element of non-pecuniary damages in the total sum of ₹2,50,000/-, the total compensation payable in the case is calculated as $(59,30,000 + 50,000)$ ₹61,80,000/-.

20. In the result, the compensation is reduced to ₹61,80,000/-. It shall carry interest at the rate of nine percent (9%) per annum as levied by the tribunal.

21. By order dated 23.12.2009, the appellant/insurance company had been directed to deposit ₹63,86,100/- with interest at the rate of seven & half percent (7.5%) per annum from the date of filing of the petition till realization with UCO Bank Delhi High Court Branch. On 11.02.2010, the court was informed that the appellant had deposited ₹81,52,303/- with UCO Bank after deducting the tax at source in the sum of ₹2,01,801/-. The learned single judge then in seisin of the matter directed that the amount of TDS would also be deposited in the UCO Bank in the account in the name of first claimant Rekha Vashisht. By the same order, UCO Bank was directed to keep a sum of ₹75,00,000/- in fixed deposits for different periods in the names of different claimants as per apportionment specified in such directions, releasing the remaining from out of amount deposited in equal shares to the five claimants. From out of the fixed deposits thus arranged liberty to draw interest was granted and certain further conditions attached. On application of first claimant Rekha Vashisht, by order dated 04.04.2011 she was allowed to release of a sum of ₹25,00,000/- from out of the FDRs taken out in her name for arranging funds for purchase of immoveable property. Later, on the application of the second claimant (Sheetal Vashisht) an amount of ₹7,00,000/- was allowed to be released from the fixed deposit receipt in her name in connection with expenses required to be incurred on her marriage.

22. The tribunal in the impugned judgment (in para 75) had noted that an amount of ₹50,000/- had already been received by the claimants in terms of the order dated 06.07.2006 passed under Section 140 of the MV Act. Thus, the said amount will have to be adjusted. The tribunal apportioned ₹25,00,000/- with proportionate interest in favour of widow (Rekha Vashisht). ₹15,00,000/- each in favour of the children (Sheetal Vashisht, Charu Vashisht & Prataksh Vashisht) and the balance ₹4,36,000/- in favour of the father of the deceased (fifth respondent). Given the facts and circumstances of the case, it will not be proper to disturb the share of the first respondent or the fifth respondent. Thus, the share of the three children (second to fourth respondent) shall stand reduced in proportion to the reduction in the award passed.

23. The Registrar General is directed to calculate the share payable to the claimants in terms of the above directions and release the same with proportionate interest in their favour in terms of the aforementioned direction. If there is any short fall, the same shall be deposited by the insurance company with the Registrar General within 30 days of today. On the other hand, if excess has been deposited or released, the same shall be refunded.

24. The statutory amount, if paid, shall also be refunded.

25. The appeal and all pending applications including cross-objections stand disposed of in above terms.

R.K. GAUBA
(JUDGE)

FEBRUARY 18, 2016/ssc