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

Date of Decision: 27.05.2016

+ **MAC.APP. 1002/2015**

MD ISMAIL & ANR

..... Appellant
Through Mr. Peeyush Ranjan, Adv.

versus

THE ORIENTAL INSURANCE COMPANY LTD

..... Respondent
Through Mr. A K Soni, Adv. for R-1

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 12.02.2015, the motor accident claims tribunal (tribunal) decided two claim cases including one (MAC petition No.112/14) instituted by the appellants on 08.11.2013 for compensation on account of death of their son Mushahid aged 17 years, in a motor vehicular accident that occurred on 17.10.2013 involving negligent driving of a motor vehicle bearing registration No.DL 1LK 0557 (the offending vehicle), admittedly insured against third party risk with the respondent insurance company (insurer). By the said judgment, the tribunal awarded Rs.8,62,740/- as compensation with interest at 9% per annum in favour of the claimants directing the insurance company to pay. The compensation was awarded after calculating the loss of dependency on the assumed income of the

deceased at minimum wages and applying the multiplier of 15 to which other non-pecuniary heads of damages in the nature of loss of love & affection and loss to estate were added.

2. The claimants are in appeal seeking enhancement of the compensation. Since the deceased was a child of 17 years of age, the law settled by this Court in MAC.APP.554/2010, *Chetan Malhotra v. Lala Ram* decided on 13.05.2016 applies. The following conclusions in the judgment in *Chetan Malhotra* (supra) need to be quoted :

“Subject to all other requisite conditions being fulfilled, for the foregoing reasons, in order to bring about consistency and uniformity in approach to the issue, it is held that claims for compensation on account of death of children shall be determined as follows :

(i). Till such time as the law is amended by the legislature, or the Central Government notifies the amendment to the Second Schedule in exercise of the enabling power vested in it by Section 163-A (3) of the Motor Vehicles Act, 1988, and except in cases wherein the prospects of employability and earnings (in future or present) of the deceased child are proved by cogent and irrefutable evidence, this having regard, inter alia, to the academic record or training in special talents or skills, for computing the pecuniary damages on account of the loss to estate, the notional income of non-earning persons (₹15000/- p.a.) as specified in the Second Schedule (brought in force from 14.11.1994), shall be assumed to be the income of the deceased child, and taken into account after it is inflation-corrected with the help of Cost Inflation Index (CII) as notified by the Government of India from year to year under Section 48 of the Income Tax Act, 1961, by applying the formula indicated hereinafter.

(ii) For inflation-correction, the financial year of 1997-1998 shall be treated as the “base year” and the value of the notional income relevant to the date of cause of action shall be computed in the following manner :-

$$\text{₹15,000/-} \times A \div 331$$

[wherein the figure of ‘₹15,000/-’ represents the notional income specified in the second schedule requiring inflation-correction; ‘A’ represents the CII for the financial year in which the cause of action arose (i.e. the accident / death occurred); and the figure of ‘331’ represents the CII for the ‘base year’]

(iii). After arriving at an appropriate figure of the present equivalent value of the notional income (i.e. inflation-corrected amount), it shall be rounded off to a figure in next thousands of rupees.

(iv). The amount of notional income thus calculated shall be reduced to two-third, the deduction to the extent of one-third being towards personal & living expenses of the deceased, the balance taken as the annual loss to estate (hereinafter also referred to as “the multiplicand”).

(v). For assessment of the pecuniary damages on account of the death of children upto the age of 10 years, the loss to estate shall be calculated, capitalizing the multiplicand, by applying the multiplier of ten (10).

(vi). For children of the age-group of more than 10 years upto 15 years, the loss to estate shall be calculated by applying the multiplier of fifteen (15).

(vii). For children of the age-group of more than 15 years but less than 18 years, the loss to estate shall be calculated by applying the multiplier of eighteen (18).

(viii). After the pecuniary loss to estate has been worked out in the manner indicated above, an amount equivalent to the amount thus computed shall be added to it as the

composite non-pecuniary damages taking care of not only the conventional heads but also towards future prospects as awarded in R.K. Malik v. Kiran Pal (2009) 14 SCC 1.

(ix). The final sum thus arrived at, appropriately rounded off, if so required to the nearest (if not next) thousands of rupees, shall be awarded as compensation for the death of the child.”

3. Since the death had occurred on 17.10.2013, the CII for financial year 2013-14 i.e. 939 applies. The notional income is calculated as (15,000 x 939 x 331) ₹42,552/- rounded off to ₹43,000/-. Since the deceased was 17 year old, the multiplier of 18 is adopted. In this view, the pecuniary loss to estate is computed as (43,000 x 2 ÷ 3 x 18) Rs.5,15,999/- rounded off to Rs.5,16,000/-. Adding similar amount towards composite non-pecuniary damages, the total compensation in the case comes to (5,16,000 x 2) Rs.10,32,000/-. The compensation is increased accordingly to Rs.10,32,000/-. It shall carry interest as levied by the tribunal in the impugned judgment.

4. The insurer is directed to pay the enhanced award by requisite deposit with the tribunal within 30 days of this judgment to make it available to be released to the claimants.

5. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 27, 2016
VLD