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

Decided on: 18th September, 2017

+ **MAC APPEAL No. 268/2017**

NEERU GARG & ORS. Appellants
Through: **Mr. Ansuman Bal, Adv.**

versus

NATIONAL INSURANCE CO. LTD. & ORS. Respondents
Through: **Mr. Pankaj Seth, Adv. for R-1.**

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

JUDGMENT (ORAL)

1. Jeevan Ram Garg, 37 years old, earning his livelihood from business, suffered injuries in motor vehicular accident that occurred on 31.05.2012 at about 12:30PM due to negligent driving of tractor bearing registration no. UK 08M 7314, admittedly insured against third party risk for the period in question with the first respondent (insurer) and died in the consequence. His wife and the father, they being the appellants (claimants), instituted accident claim case (suit no. 4863/2016) on 05.07.2012 seeking compensation. The tribunal held inquiry and, by judgment dated 03.09.2016, awarded compensation in the total sum of Rs. 17,65,000/-, directing the insurer to pay with interest @ 9% per annum, calculating it thus:-

S.No.	Heads	Compensation
1.	Loss of Dependency	Rs. 15,70,000/-
2.	Loss of love & affection	Rs. 1,00,000/-
3.	Loss of consortium to petitioner no.1	Rs. 50,000/-
4.	Loss of estate	Rs. 20,000/-
5.	Funeral expenses	Rs. 25,000/-
	Total compensation	Rs.17,65,000/-

2. The claimants by the appeal at hand submit that the loss of dependency has not been properly calculated as the tribunal ignored the fact that clear evidence had been adduced by copies of income-tax returns (ITRs) for three consecutive years, they being assessment years (AY) 2009 -2010, 2010-2011, 2011-12 indicating progressive rise in income. It is the submission of the claimants that in such view the element of future prospects of increase should have been factored in. They are also dis-satisfied with the compensation awarded under the non-pecuniary heads of damages.

3. Having heard the learned counsel on both sides and having perused the record, this Court finds merit in both the contentions mentioned above.

4. Indeed, the ITRs for AYs 2009-2010, 2010-2011 and 2011-2012 reveal declaration of income of Rs. 1,52,400/-, Rs. 1,72,300/- and Rs. 1,75,700/- respectively for three consecutive assessment years. This would mean irrefutable evidence of progressive rise in the earnings has been shown, which should have been a good reason to

factor in the element of future prospects of increase in income to the extent of 50%. [see judgment dated 28.03.2016 in MAC.APP. 548/2013 *United India Insurance Co. Ltd. v. Kamla & Ors.*].

5. It is, however, noted that the tribunal wrongly assumed the amount of Rs. 18,700/- on account of income-tax liability and deducted the same from the gross income for AY 2011-2012. It is noted that the ITR for the said year as submitted before the tribunal was not the complete document. Copy of the computation of the income for the said year as per ITR formally submitted, has been made available during the hearing before the Court. Going by the rates of income-tax prevalent for the relevant assessment year (2011-2012), it is noted that there was no tax liability. Thus, the entire income has to be treated for the calculation of loss of dependency.

6. Adding the element of future prospects, the loss of dependency is, thus, recalculated $(1,75,700 \times 150 \div 100 \times 2 \div 3 \times 15)$ Rs. 26,35,500/-, rounded off to Rs. 26,36,000/-.

7. In view of the ruling in MAC.APP.No.160/2015 *Shriram General Insurance Co Ltd v. Usha* decided by this court on 05.05.2016, non-pecuniary damages are also deficient. The same are increased to Rs. 1,50,000/- each towards loss of love & affection and towards loss of consortium and Rs. 50,000/- each towards loss of estate and funeral expense.

8. Hence, the total compensation payable in the case comes to $(26,36,000 + 1,50,000 + 1,50,000 + 50,000 + 50,000)$ Rs. 30,36,000/-. (Rupees Thirty Lakhs Thirty Six Thousand Only.) The award is enhanced accordingly. It shall carry interest as levied by the tribunal.

9. The apportionment of the award shall remain undisturbed. It is, however, directed that the entire enhanced portion of the award with corresponding interest shall be paid to the respective claimants in the form of interest bearing fixed deposit receipts taken out in their respective names from a nationalized bank for a period of ten years with right to draw periodic interest.
10. The first respondent is directed to satisfy the enhanced award by requisite deposit with the tribunal within thirty days.
11. The appeal is disposed of in above terms.

SEPTEMBER 18, 2017
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R.K.GAUBA, J.