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

Decided on: 31st August, 2017

+ **MAC APPEAL No. 6/2010**

MANJULA & ANR.

..... Appellants

Through: None.

versus

ARVINDRA KUMAR & ANR.

..... Respondents

Through: Mr. Pankaj Seth, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Santosh Kumar, aged 25 years, working as Nursing Attendant in Safdarjung Hospital, met with an accident on 03.03.2004 due to negligent driving of tempo bearing registration no. HR 38 C 9947, admittedly insured against third party risk with the third respondent (insurer). His wife and other members of the family dependent on him, now the appellants, instituted accident claim case (suit no. 176/2004) on 02.04.2004, seeking compensation on the principle of fault liability.

2. The tribunal held inquiry and, by judgment dated 26.11.2008, upheld the said claim and awarded compensation computed to the sum of Rs. 9,00,952/- directing the insurer to pay with interest. The present appeal was filed questioning the said judgment by the claimants, seeking enhancement.

3. The appeal was put in the category of 'regulars' as per order dated 13.04.2010, Thereafter, whenever the matter has been taken up there has been no appearance on behalf of the appellants. Same is the position today.

4. Having heard the learned counsel for the insurer and having gone through the record of the tribunal, this Court finds no error in the impugned judgment insofar as it calculates the loss of dependency. The tribunal accepted the plea about the income on the basis of salary slip (Ex.PW-1/C), added the factor of future prospects of increase, made proper deduction of 1/3rd towards personal & living expenses and applied the correct multiplier of 18.

5. There is, however, deficiency in the award under the non-pecuniary heads of damages in that the composite sum of Rs. 25,000/- for funeral expenses and loss of love & affection only have been added. Having regard to the date of accident, following the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, awards instead are made in the sum of Rs. 1 lakh each on account of loss of love & affection and loss of consortium and Rs. 25,000/- each towards loss of estate and funeral expenses. This would mean there is net increase in the award by Rs.2,25,000/- (Rupees Two Lakhs and Twenty Five Thousand Only). Ordered accordingly. The award shall carry interest as levied by the tribunal.

6. The insurer is directed to pay the enhanced portion of the award with corresponding interest by requisite deposit with the tribunal within thirty days whereupon it shall be released to the first appellant

Manjula Kumari (widow), it being treated as her share only. It shall be released by the tribunal in the form of interest bearing fixed deposit receipt in the nationalized bank in her name for a period of seven years with right to draw monthly interest.

7. The appeal is disposed of in above terms.

R.K.GAUBA, J.

AUGUST 31, 2017

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