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

Decided on: 6th September, 2017

+ MAC.APP. 39/2010 and CM APPL.1563/2010

MANJU SHARMA & ANR.Appellants

Through: Nemo.

versus

JYOTI SHARMA & ORS Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Shyam Sunder Sharma, 47 years, working as computer operator in State Bank of Bikaner and Jaipur, suffered injuries in a motor vehicular accident that occurred on 04.03.2005 due to negligent driving of Maruti Wagon-R car bearing registration No.DL-3CT-4706, admittedly insured against third party risk for the period in question with the third respondent (insurer) and died in the consequence on 10.03.2005. The appellants, being his wife and son, instituted accident claim case (MACT Claim Petition No.128/2008) under Section 166 of the Motor Vehicles Act, 1988 on 15.11.2008 seeking compensation. The tribunal, after inquiry, by judgment dated 01.07.2009, upheld the claim for compensation on the principle of fault liability awarding Rs.23,36,000/- as compensation, fastening the liability on the insurer to pay with interest @ seven and half per cent (7.5%) per annum, the

said amount including the expenditure on medicines and treatment (Rs.1,05,000), towards loss of dependency (Rs.21,76,000/-), on account of loss of love and affection (Rs.25,000/-), and under the heads of loss of consortium, funeral expenses and loss to estate (Rs.10,000/- each).

2. The appeal was filed seeking enhancement of compensation taking exception primarily to the calculation of loss of dependency, the contention of the claimants being that the income of similarly placed other official of the Bank had increased over the period on account of implementation of Sixth Pay Commission Report and that the tribunal had failed to appreciate that the deceased would have risen to the middle management grade over the period, the grievance also concerning the awards under the non-pecuniary heads of damages.

3. The plea about the inadequacy of loss of dependency does not appear to be correct. The tribunal accepted the income tax return (ITR) (Ex.PW-1/J) for the assessment year 2004-2005, it being based on the then salary of the deceased and after deducting income tax liability, the element of future prospects of increase to the extent of thirty per cent (30%) was added, this on the lines of dispensation in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121. The tribunal, thus, has taken care to take into account the possibility of future rise in income.

4. The grievance about the inadequacy of non-pecuniary heads, however, deserves to be accepted. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V.*

Gangalakshamma (2015) 9 SCC 150, compensation in the sum of Rs.1,00,000/- each on account of loss of love & affection and loss of consortium and Rs.25,000/- each towards loss of estate and funeral expense deserve to be granted. The award is modified accordingly. This would result in net increase in the award by (Rs.2,50,000/- - 55,000/-) Rs.1,95,000/- (Rupees One Lakh Ninety Five Thousand Only).

5. It is directed that the insurance company shall pay the enhanced portion of the award with interest @ nine per cent (9%) per annum from the date of filing of the petition with requisite deposit with the tribunal within thirty days. The enhanced portion of the award with corresponding interest shall fall to the share of the first claimant (the first appellant) Manju Sharma, it to be released in her favour in the form of interest bearing fixed deposit receipt, to be taken out in a nationalized bank for a period of five years with provision to withdraw monthly interest.

6. The appeal along with accompanying application stands disposed of in above terms.

7. *Dasti.*

R.K.GAUBA, J.

SEPTEMBER 06, 2017

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