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

Decided on: 21st July, 2017

+ **MAC.APP. 163/2008**

HITESH & ORS.

..... Appellants

Through: **Mr. Navneet Goyal, Advocate**
with appellant no.2 in person.

versus

S.N. MISHRA & ORS.

..... Respondents

Through: **Mr. Ram. N. Sharma, Advocate**
for R-3 along with Shri Alok Srivastava,
Regional Manager.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The appeal was admitted and directed to be shown in the list of 'REGULARS' by order dated 28.07.2008. Previous proceedings would show that when the appeal was taken up there was no appearance including on the part of the respondents. Against the said backdrop and, by order dated 17.07.2017, costs of Rs.10,000/- was imposed against the third respondent. Having regard to the general neglect on the part of the insurance company, the General Manager of the Insurance company was called by notice to appear and explain. In response, Mr. Alok Srivastava, Regional Manager has appeared with counsel today, both regretting previous defaults, assuring that there would be no such lapse in future.

2. In view of the assurance held out, which this court hopes will be abided by in future, the cost imposed by order dated 17.07.2017 is waived.

3. Dr. Rekha, wife of the second appellant and mother of the first appellant, the third appellant being her mother-in-law, died as a result of the injuries suffered in a motor vehicular accident that occurred on 21.09.2003 involving negligent driving of truck bearing registration no.HR-46A-4112, it admittedly being insured against third party risk with the third respondent. On the claim petition of the appellants (CS No.04/04), instituted on 09.01.2004, the tribunal, by its judgment dated 22.10.2007, awarded compensation in the total sum of Rs.8 lacs, this inclusive of Rs.7,77,600/- towards loss of dependency and Rs.22,400/- it being composite award for loss of consortium, love and affection and expenses for last rites. The insurance company was burdened with the liability to pay.

4. The present appeal was filed for enhancement and is pressed at the hearing restricted to the award under the non-pecuniary heads of damages on account of loss of love and affection, loss of consortium, loss to estate and funeral expenses.

5. Having heard the learned counsel on both sides, this court finds the award under above mentioned heads as granted by the tribunal to be grossly inadequate. Having regard to the date of the accident, following the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala v. Gangalakshamma* (2015) 9 SCC 150, award of Rs.1 lac each on account of loss of love and affection and

loss of consortium and Rs.25,000/- each towards loss to estate and funeral expenses are granted instead of composite sum mentioned above.

6. In this view, the total compensation will come to (7,77,600/- + 1,00,000/- + 1,00,000/- + 25,000/- + 25,000/-) Rs.10,27,600/-, rounded off to Rs.10,28,000/-. Thus, there would be a net increase of Rs.2,28,000/-.

7. Having regard to the facts and circumstances, and the time that has passed by, the entire enhanced portion shall be payable to the second appellant (the husband). Having regard to the time lapsed, it is directed that the enhanced portion of the award shall carry interest @ 9% per annum.

8. The insurance company, (the third respondent) shall satisfy the enhanced award by requisite deposit with the tribunal within thirty days making it available to be released to the claimant as directed.

9. The appeal is allowed in above terms.

R.K.GAUBA, J.

JULY 21, 2017

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