$~R-481

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on : 14th November, 2017

\+ MAC.APP.356 /2012

SURESH WATI ..... Appellant

Through: Mr. J.S. Kanwar, Adv.

versus

RAMESH WALIA & ORS. ..... Respondent

Through: Mr. J.P.N. Shahi, Adv. for R-3.

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

<u>JUDGMENT (ORAL)</u>

1. Naveen Kumar, aged 24 years, a bachelor, died in accident that occurred on the night of 26/27.07.2010 due to negligent driving of truck bearing registration No. HR 38K 6773, by the second respondent, it being a vehicle registered in the name of first respondent and insured against third party risk with the third respondent. His parents (the appellants) (the claimants) instituted accident claim case (MAC Petition no. 817/2010) on 07.04.2010 seeking compensation. The tribunal, by judgment dated 01.10.2011, awarded Rs. 5,31,520/- as compensation with interest @ 7.5 % per annum, fastening the liability on the third respondent (insurer).

2. The appeal seeks enhancement of the compensation primarily on the grounds that the contention of deceased earning his livelihood at Rs.400/- per day from a private restaurant (Khushi Restaurant) was wrongly rejected and the multiplier of 14 wrongly applied according

to the age of the mother, the awards of Rs. 10,000/- each towards loss of love & affection and loss to estate and Rs. 5,000/- on account of funeral expenses as well as the rate of interest also being inadequate.

3. Having heard the learned counsel and having gone through the record, this Court finds reasons set out by the tribunal in not accepting the claim about the income from the restaurant to be correct. Mere reliance on food licence cannot suffice. Some further proof to indicate the turnover of the restaurant or the income generated from such business was necessary. In these circumstances, the tribunal correctly went by the minimum wages payable in State of Uttar Pradesh.

4. The tribunal, however, committed error by adding the element of future prospects of increase in income to the extent of 50%. Following the dispensation of a Constitution Bench of the Supreme Court rendered on 31.10.2017 in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors.*, such element of future prospects will have to be restricted to 40%. At the same time, the multiplier of 18 would apply as per age of deceased, in view of the rulings in *Pranay Sethi* (supra) and *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121*.

5. The loss of dependency is thus, recalculated as (4020 x 140 ÷100 ÷ 1/2 x 12 x 18) Rs. 6,07,824/-, rounded off to Rs. 6,08,000/-. Instead of the awards under the non-pecuniary heads of damages granted by the tribunal, following the dispensation in *Pranay Sethi* (supra), the awards of Rs. 15,000/- each towards loss of estate and funeral expenses are added.

6. Thus, the total compensation in the case comes to (6,08,000 + 15,000 + 15,000) Rs. 6,38,000/- (Rupees Six Lakh Thirty Eight Thousand only). The award is increased accordingly.

7. Following the consistent view taken by this Court, the rate of interest is increased to nine per cent (9%) per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.]

8. The entire enhanced portion of the award, with the effect of corresponding increase in rate of interest, shall go to the share of first appellant Suresh Wati (mother) only, it to be released to her in the form of interest bearing fixed deposit account taken out from a nationalized bank in her name for a period of seven years with right to draw periodic interest.

9. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 14, 2017
nk