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

Decided on: 03rd August, 2017

\+ MAC.APP. 115/2009

SANDESH KUMAR DUTTA & ORS. ..... Appellants
Through: Mr. C.S.S. Tomar, Advocate

versus

GURDIP SINGH & ORS. ..... Respondents
Through: Mr. Manoj R. Sinha, Adv. for R-3

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

JUDGMENT (ORAL)

1. Saroj Dutta, then aged 55 years 8 months, working as Assistant Accounts Officer in Government of NCT of Delhi, posted at the relevant point of time in the office of Regional Director of the Education Department, suffered injuries in a motor vehicular accident which occurred on 02.11.2006 due to negligent driving of a bus bearing registration no.DL-1PB-5511 of the second respondent, it being driven by the first respondent and concededly insured against third party risk with the third respondent for the period in question and died in the consequence.

2. Her husband (first appellant) and two children (second and third appellants), collectively, the claimants instituted accident claim case (suit no.755/2006) on 18.12.2006 impleading the driver, owner and insurer of the bus as party respondents.

3. After inquiry, the Motor Accident Claims Tribunal (Tribunal) by judgment dated 19.09.2008, upheld the case for compensation on the principle of fault liability, the said finding having since attained finality since it was not challenged.

4. By the above said judgment, the tribunal awarded compensation in the sum of Rs.11,27,196/- with interest in favour of the claimants directing the insurance company to pay. The said award included Rs.11,17,696/- calculated as the loss of dependency besides Rs.2,500/- as composite sum towards loss of estate and loss of love and affection, this in addition to Rs.2,000/- towards funeral expenses and Rs.5,000/- towards loss of consortium.

5. The present appeal was filed seeking enhancement on the ground that the compensation had not been properly calculated in that the effect of the increase of the salary due to implementation of the recommendations of the Sixth Central Pay Commission was not factored in and that the non-pecuniary damages as awarded are inadequate. The claimants also submitted that the rate of interest levied at 7% p.a. is deficient.

6. During the pendency of the appeal, the claimants (appellants) sought liberty to adduce additional evidence. The said prayer was granted and, pursuant to the opportunity given, the appellants examined Mr. Suresh Chander (AW-1), a clerk form the Accounts Department of Directorate of Education to prove last salary slip (Ex. AW1/1) for the month of October 2006. The said salary certificate shows the total emoluments earned by the deceased in the month prior to the date of accident / death were in the sum of Rs.27,446/-. The

contention raised in the appeal that this should have been the benchmark for the calculation of loss of dependency must be accepted.

7. The tribunal made deduction of one-third towards personal and living expenses and applied the multiplier of 8, this taking into account the age of the deceased. This was also not correct in as much as for the age group 56-60 years, which would be the nearest, the multiplier of 9 would have the appropriate multiplier. [*Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.,* (2009) 6 SCC 121].

8. The annual salary would work out as (Rs.27,446/- x 12) Rs.3,29,352/-. It is noted that in the preceding financial year, corresponding to the assessment year 2006-2007, the deceased had made investments of over Rs.1 Lakh, which would result in reduction in the income tax liability. Having regard to the rates of income tax applicable for the assessment year 2007-2008, in case of women income upto Rs.1,45,000/- was exempted. The rate of income tax for the income beyond the said limit upto Rs.1,50,000/- being 10% and thereafter upto Rs.2,50,000/- being 20%, the income tax liability works out approximately to Rs.10,000/- which will have to be deducted. The net annual income, thus, comes to (Rs.27,446/- x 12 (-) Rs.10,000/-) Rs.3,19,352/-.

9. Thus, the loss of dependency is recomputed as (Rs.3,19,352/- x 2/3 x 9) Rs.19,16,112/-, rounded off to Rs.19,17,000/-.

10. 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. Gangalakshmamma (2015) 9 SCC 150*, awards in the sum of Rs.1 Lakh each towards loss of love and affection and loss of

consortium and Rs.25,000/- each towards loss to estate and funeral expenses are added. Thus, the total compensation comes to (Rs.19,17,000/- + Rs.1,00,000/- + Rs.1,00,000/- + Rs.25,000/- + Rs.25,000/-) Rs.21,67,000/-. The award is modified accordingly.

11. Following the consistent view taken by this court, the rate of interest is increased to 9% p.a. 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*.].

12. The tribunal, by judgment dated 19.09.2008, had apportioned sufficient amounts to the second and third appellants. In this view, it is directed that the entire enhanced portion of the award with effect of increase in the rate of interest shall fall to the share of the first appellant. The third respondent / insurance company is directed to deposit the requisite amount with the tribunal within 30 days making it available to be released.

13. The appeal is disposed of in above terms.

Dasti.

R.K.GAUBA, J.

AUGUST 03, 2017

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