

\$~R-61 & 62

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

Decided on: 12th July, 2017

+ **MAC APPEAL No. 103/2009**

RASHMI SHARMA & ORS. Appellants
Through: **Mr. Anshuman Bal, Adv.**

versus

VISHWA NATH & ORS. Respondents
Through: **Mr. J.P.N. Shahi, Adv. for R-1.**

+ **MAC APPEAL No. 291/2009**

NEW INDIA ASSURANCE CO. LTD. Appellant
Through: **Mr. J.P.N. Shahi, Adv.**

versus

RASHMI SHARMA & ORS. Respondents
Through: **Mr. Anshuman Bal, Adv.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Mahinder Rai Sharma, born on 01.04.1951, working as Manager with a Wine and Beer Shop at Pritampura, died as a result of injuries in a motor vehicular accident, that occurred on 26.10.2006, statedly involving rash driving of car bearing registration no. DL 8CB 5805, which was concededly insured against third party risk with New India Assurance Company Ltd. (appellant in MAC Appeal

No.291/2009). His widow, three children and mother, they being appellants in MAC Appeal No. 103/2009 (collectively the claimants) brought an accident claim case (petition no. 1327/2006) before the motor accident claims tribunal on 11.12.2006, seeking compensation, impleading the driver, owner and insurer of the car as respondents. After inquiry, by judgment dated 26.11.2008, the tribunal upheld the case of the claimants about death having occurred due to negligent driving of the car and awarded compensation computing it at Rs. 12,52,000/- though directing its disbursement with interest @ 8% per annum in favour of the claimants by monthly instalments through cheques spread over the future period.

2. Both the claimants and the insurer, having felt dis-satisfied, have come up to this Court with their respective appeals, each questioning only the quantum of compensation and the mode of its disbursal. On perusal, this court accepts the grievances of both sides.

3. It is clear that the tribunal has misread the evidence in rejecting the testimony of PW-2 about the then gainful employment of the deceased at a salary of Rs. 18,000/- per month and instead going by the income declared for the assessment year 2002-2003. The calculation also went haywire because a wrong multiplier was applied and deductions on account of personal and living expenses did not take into account the number of dependents. The award of non-pecuniary damages in the sum of Rs. 80,000/- towards love and affection and at Rs. 20,000/- only for funeral expenses are also inadequate.

4. For the foregoing reasons, the compensation has to be worked out afresh.

5. In the testimony of PW-2 Virender Kaushik, proprietor of M/s Virender Kaushik Wine and Beer Shop cause in the document (Ex.PW-2/1), he had mentioned the date of appointment as 01.04.2007. But, it indicated the salary having been paid in cash from 07.05.2006 onwards at the rate of Rs.18,000/-. He clarified while deposing that the date of appointment was 01.04.2006. In these circumstances, the rejection of such evidence was uncalled for.

6. The age at which the death occurred was more than 55 years, seven months. In these circumstances, the multiplier of 9 would apply. Since the number of dependents were five, $\frac{1}{4}^{\text{th}}$ had to be deducted towards personal and living expenses. In these circumstances, the loss of dependency is calculated at $(18000 \times 3 \div 4 \times 12 \times 9)$ Rs. 14,58,000/-.

7. It also appears from the evidence that after the accident, the victim was taken to Saroj Hospital & Heart Institute, Sector-14, Madhuban Chowk, Rohini, Delhi, where he died during treatment. It is pointed out that the widow (PW-1) had proved by her evidence, on the strength of her affidavit (Ex.PW-1/1), she having incurred medical expenses for the treatment of her husband, the treatment records and medical bills having been proved as Ex.P-4 to P-15. The documents proved indicate medical expenditure in the sum of Rs. 23,414/- which is rounded off to Rs. 24,000/-. This amount also will have to be added to the compensation.

8. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, non-pecuniary damages 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 expense are added. Thus, the total compensation payable in the case is computed as (14,58,000 + 1,00,000 + 1,00,000 + 25,000 + 25,000 + 24,000) Rs. 17,32,000/-. The award is modified accordingly.

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

10. It is not proper to disburse the compensation by instalments in the manner ordered by the tribunal. The mother of the deceased has since died, wherefore the award would be distributed between the widow (first appellant) and the children (second to fourth respondents). The amount computed as compensation by the tribunal has already been paid to the claimants. In these circumstances, the entire enhanced portion of the award shall be payable only to the widow (first appellant) Rashmi Sharma. It shall be paid with the corresponding interest by the insurance company by requisite deposit with the tribunal within 30 days and be put in a fixed deposit receipt in an interest bearing account in her name in a nationalized bank initially for a period of six months.

11. Both appeals stand disposed of in above terms.

12. Statutory amount shall be refunded to the insurance company.

R.K.GAUBA, J.

JULY 12, 2017

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