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

Decided on: 12th September, 2017

\+ MAC APPEAL No. 145/2010

SANTOSH & ORS. ..... Appellants

Through: None.

Versus

UNITED INDIA INS. CO. & ANR. ..... Respondents

Through: Mr. Pankaj Seth, Adv. for R-1.

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

JUDGMENT (ORAL)

1. Anil Kumar, then aged 34 years, a married person, suffered injuries in a motor vehicular accident that occurred on 04.06.2001 due to negligent driving of bus bearing registration no. DL 1PA 3571, which was admittedly insured against third party risk for the period in question with the first respondent (insurer). An accident claim case was filed by him (MACT No. 668/2009) on 15.04.2002 seeking compensation for the injuries suffered. The Tribunal's record shows that the inquiry into the claim petition remained pending even while the said original claimant (victim Anil Kumar) continued to be under treatment. He eventually died on 27.06.2006 and on the basis of applications moved, *inter alia,* invoking Order 6 Rule 17 and Order 22 Rule 3 of the Code of Civil Procedure, 1908 (CPC) by his parents, now the appellants, they were allowed to take over the case, it being treated as a case for compensation on account of death due to

negligence. It may be mentioned here that during the course of treatment, Lalita, the wife of Anil Kumar deserted him. She entered into an agreement with the parents described as Panchayat Faisla (Ex.PW-1/6) in terms of which she received an amount of Rs. 5,00,000/- from the appellants and forfeited her right in the compensation that may be awarded by the Tribunal on the then pending claim petition.

2. The Tribunal, after inquiry, by judgment dated 11.12.2009, awarded compensation in the sum of Rs.8,66,500/- in favour of the appellants directing the insurer to pay with interest @ nine per cent (9%) per annum, calculating it thus:-

S.No.	Heads of compensation	Amount
1.	Medicine & Treatment	Rs. 2,80,000/-
2.	Loss of Income	Rs. 46,500/-
3.	Loss of Earning Power	Rs. 1,15,000/-
4.	Loss of Amenities	Rs. 75,000/-
5.	Pain & suffering	Rs. 75,000/-
6.	Conveyance and Special Diet	Rs. 35,000/-
7.	Loss of Dependency	Rs. 1,70,000/-
8.	Loss of Love & affection	Rs. 50,000/-
9.	Funeral expenses	Rs. 10,000/-

10.	Loss to Estate	Rs. 10,000/-
	Total	**Rs. 8,66,500/-** **(Rupees Eight Lacs Sixty Six thousand five hundred only.**

3. It is noted that while calculating the compensation under various heads relatable to claims maintained in fatal accident cases, the Tribunal has taken it to be a case of bachelor's death, assuming the multiplier on the basis of age of the claimant parents, also adding the compensation towards the expenditure incurred on account of medical treatment and the loss of earnings during the period the victim was alive, such awards including damages even under the heads of loss of amenities and pain & suffering which, technically speaking, were personal to the original claimant, and which, under the existing jurisprudence, would not survive.

4. The appeal was directed to be put in the regular matters as per order dated 17.02.2011. But no one has appeared for the claimants when it is taken up for hearing. The matter has been considered with the assistance of the first respondent (insurance company).

5. The appeal at hand was filed raising the grievance that the compensation awarded is inadequate, the prime contention being raised with regard to the fact that the element of future prospects has not been factored in and the Tribunal has not taken into account the

fact that the parents had paid an amount of Rs. 5 lakhs to the wife of the victim who had deserted him.

6. The amount paid by the parents to the wife of the victim who deserted him on account of helpless and hopeless state in which he was then placed, cannot be the guiding factor. The compensation has to be determined on the basis of settled principles of law. The Tribunal has improperly added awards under the heads of loss of amenities and pain & suffering which would not survive and, thus, had to be kept out. It does appear that the victim was alive for about five years and, therefore, the loss of earning for the corresponding period, in the peculiar facts and circumstances, could be included in the final dispensation. But then, the said amount (1,15,000 + 46,500 = Rs. 1,61,500/-) is falling short of loss of earnings for five years (3100 x 12 x 5 = Rs. 1,86,000/-) by only Rs. 24,500/-. This is more or less set-off by the inclusion of (Rs. 75,000 + 35,000) Rs.1,10,000/- under the impermissible heads of damages. The same reasoning applies to the inadequacy under the heads of loss of estate and funeral expenses.

7. For the foregoing reasons, there is no scope for any enhancement in the award.

8. The appeal is dismissed.

R.K.GAUBA, J.

SEPTEMBER 12,2017
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