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

Decided on: 14th November, 2017

+ **MAC APPEAL 324/2012 and CM 18312/2014**

SATYA NARAYAN CHAUDHARY & ORS. Appellant

Through: None

versus

MOHD. YAMEEN & ORS. Respondents

Through: Mr. Arun Yadav, Advocate for
R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Jyan Bhushan, then aged 35 years, employed as Senior Sales Executive (Insurance), HDFC Bank, suffered injuries in a motor vehicular accident that had occurred on 30.03.2008 due to the negligent driving of motor vehicle described as Tata truck bearing registration no.HR-38E-3327 (the truck) by the first respondent (driver), it being a vehicle registered in the name of the second respondent (owner) and admittedly insured against third party risk for the period in question with the third respondent (insurer). He was unmarried. The accident claim case (MACP 824/2010) was instituted on 02.08.2008 by his parents and sister, they being the appellants (the claimants) seeking compensation.

2. The Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 15.12.2011, concluded that the accident had occurred causing the death due to the negligent driving of the truck. It computed compensation in the total sum of Rs.9,75,600/- and directed the insurer to pay the same with interest at the rate of 7.5% p.a. The amount of compensation includes Rs.9,50,586/- towards loss of dependency, Rs.10,000/- each towards loss of love and affection and loss to estate and Rs.5,000/- towards funeral expenses.

3. Aggrieved with the award, the present appeal was filed by the claimants seeking enhancement. The appeal was put in the list of 'regulars' and directed to come up in due course. When it is called out on its own turn for hearing, there is no appearance for the appellants / claimants.

4. The learned counsel for the insurer is present and has been heard. The record has been perused.

5. It was pleaded before the tribunal that the deceased, working as Senior Sales Executive with HDFC Bank Ltd., was getting a salary of Rs.27,663/- p.m. and was also earning additionally Rs.40,000/- p.m. from business in the name of style of M/s. Chaudhary Enterprises, he being a distributor. The claimants had also stated before the tribunal that the deceased would pass on Rs.30,000/- p.m. to mete out the expenditure of the family. They proved by evidence that he was a graduate holding the degree of B.Sc. (Hons.) and was pursuing the course of study leading to the degree of Master of Business Administration from Bhartiya Vidya Bhawan. The claimants examined Gayatri Devi Jaiswal (PW-2) who is the mother of the

deceased besides Ayush Khanna (PW-1), Personnel Banker, HDFC Bank Ltd., Rajnish Kumar (PW-4), Manager, HDFC Bank Ltd., this in addition to the testimony of Vinay Kumar Singh (PW-3) who proved the sequence of events leading to the accident. The tribunal did not find convincing the evidence about the earnings from M/s. Chaudhary Enterprises. It noted that the salary slips for some of the intervening months (October 2007 to March 2008) had not been shown. From the document (Ex. PW4/A) it concluded the net salary to be Rs.23,502/-. It also noted the evidence of PW-4 to the effect that the basic salary was Rs.12,000/- p.m. while the deceased would also get incentive in the amount of Rs.12,642/- (as on March 2008). The tribunal concluded that the deceased was not working on a fixed salary and, therefore, drew up an average on the basis of the salary for three months taking the income of the deceased as Rs.22,633/- p.m. and calculated the loss of dependency accordingly. It made a reduction of 50% towards personal and living expenses, rejecting the contention that one-third be deducted on account of the dependency of the sister, noting that she was 27 years old. The tribunal chose the multiplier of 7 going by the age of the claimant mother. After the award had been passed, the claimants filed an application for review which was declined by the tribunal by its judgment dated 30.01.2012.

6. The appeal questions the calculation of loss of dependency submitting that the additional income from M/s. Chaudhary Enterprises deserves to be added and that the rejection of the certificate secured from RCM Business regarding income from commission was improper. The claimants also submit that the salary

for the month of July 2007 was Rs.27,663/- and the conclusion of the tribunal by taking the amount of Rs.22,633/- as the average salary was incorrect. They refer to the certificate from Kwatra Tarun & Associates about additional earnings of Rs.20,000/- from M/s. Chaudhary Enterprises. The claimants reiterate that the deduction on account of personal and living expenses to the extent of one-third should have been made rather than one half, their further contention being that the case merited adoption of the multiplier of 16 besides higher non-pecuniary damages and rate of interest.

7. The claimants moved an application during the pendency of the appeal to adduce further evidence, which opportunity was granted. In the wake of such permission, they examined Tarun Kwatra (AW-1), a Chartered Accountant; Mr. Vinay Kumar Mishra (AW-2), Manager, RCM Fashion Suiting Pvt. Ltd.; Navin Kumar (AW-3), an Inspector in Income Tax Department; N.K. Bahadur (AW-4), an Inspector from the VAT Department of the Government; and Sumit Kumar (AW-5), another inspector from Income Tax Department to prove the income of the deceased additionally from his venture in the name and style of M/s.Chaudhary Enterprises, he being a distributor of RCM Fashion Suiting Pvt. Ltd. which business was registered, *inter alia*, with VAT Department, reliance primarily being placed on the Income Tax Return (ITR) for the assessment year (AY) 2007-2008.

8. The appeal was put in the list of regulars, to come up on its own turn, by order dated 28.03.2017. When it is called out for hearing, there is no appearance on behalf of the claimants. The learned counsel

for the insurer has been heard and with his assistance, the record perused.

9. The evidence of AW-1, AW-2 and AW-4 does bring out clearly that the deceased was also engaged in the business in the name of M/s. Chaudhary Enterprises, the accounts of the said proprietary business having been duly audited. But the declaration through ITR (Ex. AW5/1) which has been proved in the course of additional evidence, as seen in the light of the testimony of the official witness (AW-5) read alongside the evidence of another official witness (AW-3) shows that the total income from such private business was Rs.20,000/- p.a. rather than it being a monthly income.

10. Given the variation in the earnings of the deceased from his employment with HDFC Bank Ltd. it is clear that the income would rise or fall from month to month according to the incentives. In these circumstances, the approach of the tribunal in going by the average cannot be faulted. The claimants have thus been able to prove only the additional income of Rs.20,000/- accruing from the private business which may be added to the calculations.

11. The approach of the tribunal in making a deduction of 50% towards personal and living expenses was not incorrect because the prime claim is on account of the loss of dependency of parents, the deceased being a bachelor, this being the norm as per ruling of the Supreme Court in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121. However, having regard to the decision in *Sarla Verma (supra)*, as also of the 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., the error in the choice of the multiplier needs to be corrected which will have to be 16 as per the age of the deceased (35 years).

12. The annual income of the deceased is taken as [Rs.22,633/- x 12 + Rs.20,000/-] Rs.2,91,596/-. As per the decision of the Supreme Court in *Pranay Sethi* (supra), the element of future prospects of increase to the extent of 40% are added. The notional income therefore being [Rs.2,91,596/- x 140/100] Rs.4,08,234.4, rounded off to Rs.4,08,235/-, the loss of dependency is calculated as [Rs.4,08,235 / 2 x 16] Rs.32,65,880/-, rounded off to Rs.32,66,000/- (Rupees Thirty two lakh and sixty six thousand only). Following the dispensation in *Pranay Sethi* (supra), amounts of Rs.15,000/- each towards loss to estate and funeral expenses are added.

13. Thus, the total compensation in the case comes to [Rs.32,66,000/- + Rs.15,000/- + Rs.15,000/-] Rs.32,96,000/- (Rupees Thirty two lakh and ninety six thousand only). The award is modified accordingly.

14. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum (nine percent) 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.*]

15. By order dated 05.12.2016, some portion of the award was allowed to be released on application (CM No.41030/2016) to second appellant. The insurance company is directed to satisfy the enhanced award by requisite deposit with the tribunal within 30 days, it to be

released to the claimants in the form of fixed deposit receipts taken out from a Nationalized bank in their respective names for a period of ten years with right to draw periodic interest.

16. The appeal and the pending application are disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 14, 2017

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