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

Decided on: 30th October, 2017

+ MAC.APP. 633/2011

SUMAN & ORS

..... Appellants

Through: Ms. Aruna Mehta, Advocate

versus

MADAN KUMAR & ORS

..... Respondents

Through: Mr. Navneet Goyal, Adv. for R-2

Mr. Sameer Nandwani, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Trivendra Nath, aged about 36 years (born on 19.09.1973), working as Assistant Design Engineer with SMS India Pvt. Ltd., suffered injuries in a motor vehicular accident that occurred on 19.08.2009 due to the negligent driving by the first respondent (driver) of truck bearing registration no.HR-38C-7827 and died in the consequence. The truck admittedly is registered in the name of the second respondent (owner) and was concededly insured against third party risk for the period in question with the third respondent (insurer).
2. On the accident claim case (suit no.349/2009) instituted on 14.09.2009 by the appellants (collectively, the claimants), they being the wife, children and parents of the deceased, the Motor Accident

Claims Tribunal (Tribunal) held inquiry, and by judgment dated 24.12.2010, returned a finding that the accident and death had occurred due to the negligent driving of the truck. The said finding has attained finality as it was not challenged by any of the respondents including the owner and insurer of the truck. The Tribunal determined the compensation in the total sum of Rs.24,80,300/-, it being inclusive of Rs.24,50,300/- towards loss of financial dependency, Rs.10,000/- each on account of the loss of love and affection and loss of consortium and Rs.5,000/- each due to loss to estate and funeral expenses.

3. It appears that the insurer had raised the plea of the breach of terms and conditions of the insurance policy on the question of the driving licence of the first respondent. The tribunal accepting the said plea, while directing the insurer to initially pay the compensation to the claimants, granted it recovery rights.

4. Two appeals came to be preferred including one at hand by the claimants seeking enhancement of compensation, and the other (MAC 285/2011), by the owner questioning the grant of the recovery rights in favour of the insurer, primarily contending that no opportunity to lead evidence in rebuttal had been given by the tribunal on that subject. It may be added here that the appeal at hand (MACA 633/2011) of the claimants came up before the court for the first time on 15.07.2011. Before this appeal could be considered, the other appeal (MACA 285/2011) of the owner had been decided by a learned single judge of this court, by judgment dated 19.04.2011, thereby remitting the issue of recovery rights to the tribunal for fresh adjudication.

5. The learned counsel for the insurer and owner who are participating in the proceedings in the appeal at hand before this court fairly concede that the said remit on the limited issue would not affect the prayer of the claimants for enhanced compensation by the appeal at hand. They, however, informed that the matter arising out of the order of this court remanding the matter on the issue of recovery rights is still pending before the tribunal.

6. In the appeal at hand, the prime contention of the claimants has been that the loss of dependency calculated by the tribunal is inadequate as the income of the deceased was under assessed. They would take the responsibility for this adequacy on themselves, as sufficient evidence was not adduced. It is for this reason that they came up with an application (CM 12641/2011) invoking Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC) seeking opportunity to lead additional evidence. The said application was partly allowed by order dated 06.05.2014. The claimants, however, moved the Supreme Court by Civil Appeal 9023/2015 which was allowed by judgment dated 28.10.2015 whereby the matter was remanded to this court for all the documents produced by the claimants to be taken on record and a decision thereafter to be rendered on merits. In the wake of such directions, the claimants were called upon to adduce additional evidence as had been sought by them by the aforementioned application under Order 41 Rule 27 CPC. Pursuant to the liberty given, they examined Hridayesh Upadhyay (AW-1), Deputy General Manager (HR & Administration) of M/s. SMS India Pvt. Ltd., Gurgaon, where the deceased was employed.

During the course of additional evidence, the claimants have brought on record, *inter alia*, the copy of the Income Tax Return (ITR) submitted by the deceased on 17.07.2009 for the assessment year (AY) 2009-2010 (page 50 of the paper book). They have also brought on record, copy of Form 16 issued by the employer for the AY 2009-2010 (page 51-52 of the paper book) and for AY 2010-2011 (page 53-54 of the paper book). The last mentioned form 16 pertains to the period 01.04.2009 till 18.08.2009, the date on which the accident occurred, the victim having died on the next date. This document, learned counsel on all sides fairly agree, represents the last emoluments drawn by the deceased from his employer, it pertaining to the period of 130 days. The total income reflected in this document is Rs.2,47,390/-. This would mean the average monthly income would be $[Rs.2,47,390/- / 130 \times 30]$ Rs.57,090/-.

7. The annual income for the relevant period, thus, would come to $[Rs.57,090/- \times 12]$ Rs.6,85,080/-. The learned counsel on all sides fairly concede that the income tax liability for the AY 2010-2011 against such income would approximately be Rs.51,000/-. Thus, the net annual income would come to $[Rs.6,85,080(-) Rs.51,000/-]$ Rs.6,34,080/- (Rupees Six Lakh thirty four thousand and eighty only).

8. Having regard to the clear and irrefutable proof of progressive rise in income, the employment of the deceased being regular and permanent, and keeping in view his age at the time of the death, future prospects to the extent of 50% have been correctly factored in by the tribunal. Adding the said element, the annual income on which loss of dependency is to be calculated comes to $[Rs.6,34,080/- \times 150/100]$

Rs.9,51,120/-. Making a deduction of one-fourth towards personal and living expenses and applying the multiplier of 15, the loss of dependency is re-calculated as [Rs.9,51,120/- x $\frac{3}{4}$ x 15] Rs.1,07,00,100/-, rounded off to Rs.1,07,00,000/- (Rupees One Crore and seven lakh only).

9. It is noted that the awards under the non-pecuniary heads of damages are inadequate. Following the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, award of Rs.1,00,000/- each on account of loss of love and affection and loss of consortium and Rs.25,000/- each towards loss to estate and funeral expenses, are added.

10. Thus, the total compensation in the case comes to [Rs.1,07,00,000/- + Rs.1,00,000/- + Rs.1,00,000/- + Rs.25,000/- + Rs.25,000/-] Rs.1,09,50,000/- [Rupees One crore, nine lakh and fifty thousand only]. The award is modified accordingly. It shall carry interest as levied by the tribunal.

11. It is noted that the tribunal had apportioned the award by specifying the amounts in favour of the claimants. Having regard to the age of the respective claimants, it is instead directed that 60% of the award shall fall to the share of the first claimant / Suman (widow), the balance being equally apportioned amongst the remaining four claimants with corresponding interest.

12. The insurance company will be obliged to deposit the above mentioned amount payable under the enhanced award within 30 days making it available to be released to the claimants. This would be

subject to its contentions and, of course, the contentions of the owner of the offending vehicle vis-a-vis the plea for recovery rights which is presently pending adjudication before the tribunal.

13. The appeal is disposed of in above terms.

R.K.GAUBA, J.

OCTOBER 30, 2017

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