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

Decided on : 16th October, 2017

+ MAC.APP. 322/2012

DEV BAHADUR & ORS

..... Appellant

Through: Ms. Lakshmi Gurang, Ms.
Easha Kadian and Mr. Yuvan
Gandhi, Advs.

versus

SURENDER SINGH & ORS

..... Respondents

Through: Mr.Rishabh Tetly, Adv. for
Mr.Sanjay Ghose, Adv. for R-2
and R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. Puran Singh, a bachelor, then aged about 22 years, having completed his school education and pursuing a course leading to degree of Bachelor of Arts, suffered injuries in a motor vehicular accident that occurred on 21.10.2006 involving negligent driving of truck bearing registration No. DL-IGB-5895 of the second and third respondent (Fire Brigade service) and died in the consequence. The first and second respondent being his parents (collectively, the claimants), instituted accident claim case (Suit No.62/06/2011) on 11.12.2006, impleading the second respondent and its employee along with the driver of the truck, he being the first respondent in the appeal, as parties. The claim case was clubbed by the Tribunal for inquiry

with another similarly placed case also arising out of the same accident and, by a common judgment dated 20.12.2011, upheld it for compensation under Section 166 of the Motor Vehicle Act, 1988 holding the truck driver responsible as the principal tort-feasor. The award in the total sum of Rs.3,18,740/- was awarded on account of death of Puran Singh, the said amount inclusive of Rs.3,03,732/- towards loss of dependency, Rs. 10,000/- towards loss of estate and consortium, and Rs. 5000/- towards funeral expenses. The second and third respondents were held liable to pay the said amount of money with interest @ 7.5% per annum to the claimants, the amount having been apportioned amongst them and Meena Kumari, described as a sibling (sister) of the deceased.

2. Aggrieved with the award of compensation granted by the Tribunal, the present appeal was filed seeking enhancement, it being pointed out that the loss of dependency has been calculated on the assumed income which is below the minimum wages prevalent at the relevant point of time. It is also the grievance of the claimants that the Tribunal has adopted the multiplier of 13 going by the average age of parents including the age of the mother which on the relevant date was 40 years though she would hopefully survive for a longer period. At the hearing, the inadequacy of the non pecuniary damages, and also the rate of interest levied, have also come up for consideration.

3. The first respondent, the driver of the truck has not been served as the process at his Haryana address had not returned. The counsel for the claimants, however, submits that since the liability was fastened on the second and third respondent, they representing the

owner of the offending vehicle and the employer of the driver respectively, there being no insistence on their behalf for the money to be recovered from the driver, the prayer made is for the service and presence of the first respondent to be dispensed with. The counsel for the second and third respondent, on being asked to respond, submitted that he would leave the matter to the Court. In given circumstances, the prayer being just and proper, the service and presence of first respondent is dispensed with.

4. With the consent of learned counsel for both the parties, the matter has been taken up for final hearing and disposal. Having heard the arguments and having gone through the Tribunal's record, this Court finds that a case is made out for increase in the compensation on the counts that have been urged by the claimants.

5. It appears that the claimants had pleaded and made an attempt before the Tribunal to prove that the deceased was working part time with two different entities. Some evidence in this regard was also brought on record. But then, the Tribunal was satisfied with only a part of such evidence and, against this backdrop, proceeded to hold that the deceased was earning Rs.2596/- per month. This amount of notional income is undoubtedly unacceptable it being way below the minimum wage payable to a matriculate person. The minimum wages of Rs.3760/- thus deserve to be adopted as the bench mark. There is merit in the contentions of the claimants that the multiplier of 15 should have been adopted given the fact that the age of the claimant mother was 40 years old. However, a further error that has

been committed by the Tribunal is in factoring the future prospects of increase in income.

6. In the case reported as *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, Supreme Court, *inter-alia*, ruled that the element of future prospects of increase in income will not be granted in cases where the deceased was “self employed” or was working on a “fixed salary”. Though this view was affirmed by a bench of three Hon’ble Judges in *Reshma Kumari & Ors. Vs. Madan Mohan & Anr.*, (2013) 9 SCC 65, on account of divergence of views, as arising from the ruling in *Rajesh & Ors. vs. Rajbir & Ors.*, (2013) 9 SCC 54, the issue was later referred to a larger bench, *inter-alia*, by order dated 02.07.2014 in *National Insurance Company Ltd. vs. Pushpa & Ors.*, (2015) 9 SCC 166.

7. Against the above backdrop, by judgment dated 22.01.2016 passed in MAC Appeal No. 956/2012 (*Sunil Kumar v. Pyar Mohd.*), this Court has found it proper to follow the view taken earlier by a learned single judge in MAC Appeal No. 189/2014 (*HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalita Devi & Ors.*) decided on 12.01.2015, presently taking the decision in *Reshma Kumari (Supra)* as the binding precedent, till such time the law on the subject of future prospects for those who are “self-employed” or engaged in gainful employment at a “fixed salary” is clarified by a larger bench of the Supreme Court.

8. In the facts and circumstances where the income of the deceased has been notionally assessed, the element of future prospects

will have to be kept out. Thus, the loss of dependency is recomputed as $(3760/2 \times 12 \times 15)$ Rs.3,38,400/- rounded off to Rs.3,39,000/-.

9. The non-pecuniary damages awarded by the Tribunal are not in *sync* with the dispensation in similarly placed cases. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, compensation in the sum of Rs.1 lakh on account of loss of love & affection and Rs.25,000/- each towards loss of estate and funeral expense are added.

10. Thus, the total compensation payable in the case is computed as (Rs.3,39,000/-+1,00,000/-+50,000/-) Rs.4,89,000/- (Rupees Four Lacs and Eighty Nine Thousand only). The award is enhanced accordingly.

11. 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 nine per cent (9%) per annum from the date of filing of the petition till realization.

12. The second and third respondents are directed to satisfy the enhanced award by requisite deposit with the Tribunal within 30 days. Given the disbursement already made in favour of the other respondent, the entire enhanced amount, with the corresponding effect of increase in the rate of interest, shall fall to the exclusive share of the second appellant (mother) only. It shall be released to her in the form of fixed deposit receipt taken out from a nationalized bank in her name for a period of seven years with liberty to draw interest periodically.

13. The appeal is disposed of accordingly.

R.K.GAUBA, J.

OCTOBER 16, 2017

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