$~R-459 & 460

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

Decided on: 10th November, 2017

\+ MAC APPEAL 180/2012

THE NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through: Mr. J.P.N. Shahi and Ms. Komal Dhingra, Advocates

versus

MAMTA VASHISHTA & ORS. ..... Respondents
Through: None

\+ MAC APPEAL 605/2012

MAMTA & ANR. ..... Appellants
Through: None

versus

THE NEW INDIA ASSURANCE CO. LTD. & ORS. ..... Respondents
Through: Mr. J.P.N. Shahi and Ms. Komal Dhingra, Advocates

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

JUDGMENT (ORAL)

1. Kapil Dev Vashishta, aged 28 years old, statedly gainfully employed as a Computer Software Executive in a private employment, suffered injuries in a motor vehicular accident that occurred on 07.09.2006 around 6.00 pm. due to the negligent driving of a bus

bearing registration no.DL-1PB-1472 (bus) and died in the consequence.

2. The accident claim case (MACT 431/06/11) was instituted on 04.01.2007 by his wife, Mamta Vashishta for herself and for two other members of the family dependent on him impleading, amongst others, father of the deceased as fourth respondent, seeking compensation under Section 166 and 140 of the Motor Vehicles Act, 1988.

3. The Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 14.11.2011, accepted the case for compensation holding the bus driver Mahavir (respondent in these appeals) to be responsible for the accident. The compensation in the total sum of Rs.10,64,524/- was awarded and the liability to pay the same fastened on the New India Assurance Company Ltd. (insurer) with interest at the rate of 7.5% p.a, such compensation inclusive of Rs.9,34,524/- towards loss of dependency, besides Rs.1,00,000/- towards loss of love and affection and Rs.10,000/- each under the non-pecuniary heads of loss of consortium, loss of estate and funeral expenses.

4. The insurer has challenged the said award by MACA 180/2012, *inter alia*, submitting that the award under the head of loss of love and affection is excessive and that the element of future prospects of increase in the income added over and above the earnings notionally assessed with the help of minimum wages payable to a graduate was incorrect. Reliance is placed on the decision 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.

5. The claimants on the other hand also preferred MACA 605/2012 primarily contending that the view taken by the tribunal for assessing the income of the deceased was erroneous as evidence had been produced to show his earnings to be in the region of Rs.35,000/- p.m. The claimants thus seek enhancement in compensation.

6. Both these appeals were put in the list of regulars, directed to come up on their own turn as per orders passed on 08.02.2016. When they are called out for hearing in their own turn, there is no appearance for the claimants who are appellants in MACA 605/2012 and respondents in MACA 180/2012.

7. The learned counsel for the insurer has been heard and the record has been perused.

8. It is noted that the tribunal rejected (by observations in para 14 of the impugned judgment), the case of the claimants that the earnings of the deceased were Rs.35,000/- p.m. on the grounds that they had not brought any corroborative cogent evidence in such regard. Though reference is made to the affidavit of PW-1, such affidavit having been referred to (in para 12) as Ex.PW1/A, the contents of the said affidavit were not taken note of by the tribunal. A perusal of the tribunal's record also shows that the first claimant (Mamta Vashishta) was the prime witness on the question of earnings. She had first tendered her affidavit (Ex. PW1/A) sworn on 21.10.2008 by her statement recorded on 06.02.2009. Later, she brought additional evidence in the form of another affidavit (Ex. PW1/A-1) sworn on

16.08.2011 which was tendered by her under further examination on 16.08.2011. In the said additional evidence, she had referred to various loans taken by the deceased, he having undertaken and been discharging the responsibility of the repayment of such loans by instalments. She also relied on the copy of the statement of the account held by the deceased with ICICI Bank reflecting periodic credits in the account. The monthly credits which are shown in such statement do seem to reflect the earnings much more than mere minimum wages. She also sought to prove, through the said additional affidavit, that the deceased was using credit cards and making purchases with their use and further that he was maintaining a motorcycle which would also require not only repayment of the loan amount but also expenditure for its maintenance and fuel thereby consumed.

9. The contents of the additional evidence of the claimant seem to have escaped the notice of the tribunal in entirety. This, in the opinion of this court, renders the judgment perverse and therefore, unsustainable.

10. For the foregoing reasons, the impugned judgment of the tribunal dated 14.11.2011 is set aside. The claim case is remanded to the tribunal for fresh adjudication and computation of just compensation. For such purposes, the parties are directed to appear before the tribunal on 11.12.2017.

11. Having regard to the fact that the claimants have not appeared at the stage of hearing on these appeals, in all fairness, it would be proper that the tribunal issues court notices to them to secure their

presence before proceeding further, this in the event of they failing to appear on the date hereby fixed.

12. The tribunal would also ascertain from all parties appearing before it if they wish to lead any further evidence relevant to the issue and, if so, grant appropriate opportunity.

13. In terms of order dated 21.02.2012 in MACA 180/2012, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General within the period specified, the balance directed to be kept in fixed deposit with UCO Bank, Delhi High Court branch initially for a period of one year to be renewed from time to time. By subsequent order dated 28.08.2012, an amount of Rs.2,24,524/- was permitted to be released to the first claimant (Mamta Vashishta), the amount already received by the said claimant would be liable to be adjusted against the award that is expected to be passed afresh by the tribunal. The balance amount lying in fixed deposit shall continue to be retained in terms of the earlier directions. Till the matter is adjudicated afresh by the tribunal, the tribunal would have the liberty to pass necessary directions about its disbursal.

14. Keeping in view the fact that the case relates to an accident that had occurred in September 2006, it is essential that the tribunal proceeds expeditiously. Therefore, it is directed that the tribunal shall pass its fresh judgment, after hearing the parties and after further proceedings in above light at an early date preferably within four months of the date of first appearance fixed above.

15. The statutory deposit made by the insurance company shall be refunded.

16. Both appeals stand disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 10, 2017

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