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

Decided on: 17th July, 2017

\+ MAC APPEAL No.190/2009 and CM APPL.5042-5043/2009

KAMLESH & ORS. ..... Appellants
Through: Mr. Meraj A. Khan, Advocate with Mr. A. K. Sharma, Advocate

versus

DEEN MOHD. & ORS. ..... Respondents
Through: Mr. Pradeep Gaur, Advocate with Mr. Amit Gaur, Advocate for R-3.

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

JUDGMENT (ORAL)

1. Mr. Jan Singh, working as Electrical Technician with National Thermal Power Corporation (NTPC), then aged 50 years eight months, died in a motor vehicular accident that occurred on the night intervening 16-17.07.2003 due to negligent driving of truck bearing registration no.DL-1GA-6583, admittedly insured for third party risk with the third respondent (the insurer). The appellants, being the dependents family members of the deceased, instituted accident claim case (Suit No.421/2003) on 18.07.2003. After having recorded satisfaction that the claim was made out on fault liability, the Motor Accident Claims Tribunal (the tribunal) awarded compensation in the total sum of Rs.15,44,000/- with interest @ 9% per annum, it including Rs.15,04,000/- towards loss of dependency, Rs.10,000/-

towards funeral expenses, Rs. 30,000/- as composite sum towards loss of love and affection and loss of consortium.

2. The appellants, by the appeal at hand, seek enhancement of the compensation, their grievances being that the award under pecuniary and non-pecuniary heads of damages are inadequate.

3. The tribunal noted the last drawn salary to be Rs.37,090/-. This included leave encashment of Rs.15,374/- Thus, the actual salary comes to Rs.21,716/- per month. The annual salary would work out to (Rs.21,716/- x 12) Rs.2,60,592/-. As per the decision in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC, 121,* the element of income tax liability will have to be deducted. Going by the rates of income tax applicable for the relevant period, the said income tax liability comes approximately to Rs.50,000/-. Thus, the net annual salary would be (2,60,592/- - 50,000/-) Rs.2,10,592/-.

4. Having regard to age at which the death occurred, 15% increase will have to be added towards future prospects. (*Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54).* In this view, the loss of dependency has to be calculated on the notional income of Rs.2,10,592/- x 115/100) Rs.2,42,180.8p.

5. The tribunal went wrong in calculations by deducting one-third towards personal and living expenses and applied the multiplier of 9.4. Having regard to the number of dependents, deduction towards personal and living expenses has to be one-fourth, and having regard to the age, the multiplier of 11 would apply. Thus, the loss of

dependency comes to (2,42,180.8 x 3/4 x 11) Rs.19,97,991.6p rounded off to Rs.20 lacs.

6. Indeed, the non-pecuniary damages awarded by the tribunal are inadequate. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, compensation in the sum of ₹1 lakh each on account of loss of love & affection and loss of consortium and ₹25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case is computed as (20,00,000/- + 2,50,000) Rs.22,50,000/-.

7. The compensation is enhanced accordingly. Needless to add, it shall carry interest as levied by the tribunal.

8. It is noted the specific amounts were granted in favour of second to fifth claimants (the appellants), the balance going to the widow (the first appellant/claimant). In this view, it is directed that the entire enhanced portion of the compensation with corresponding interest shall be released in favour of the (first appellant), such release being in the form of fixed deposit receipt in a nationalized bank in her name for a period of four years with right to draw monthly interest.

9. The insurance company shall pay the enhanced compensation by requisite deposit with the tribunal within thirty days of this judgment.

10. It is noted that the insurance company was granted recovery rights against the other respondents. This judgment does not disturb the said directions.

11. The appeal is disposed of in above terms.

R.K.GAUBA, J.

JULY 17, 2017
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