

\$~15 to 17

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

Decided on: 23rd August, 2017

+ MAC.APP. 146/2017

SHWETA RAI Appellant

Through: Ms. Neha Garg and Mr. Nitin
Garg, Advocates

versus

DHANI RAM & ORS Respondents

Through: Ms. Meha Aggarwal, Ms. Pranati
Bhatnagar and Mr. Gaurav Nair, Advocates
for R-3

Mr. B.P. Saxena, Advocate for R-4 to 7

+ MAC.APP. 200/2017 and CM 8650-8651/2017 and
17000/2017

NEW INDIA ASSURANCE COMPANY LTD Appellant

Through: Ms. Meha Aggarwal, Ms. Pranati
Bhatnagar and Mr. Gaurav Nair, Advocates

versus

NIRMALA DEVI & ORS Respondents

Through: Mr. B.P. Saxena, Adv. for R-1 to
4

Ms. Neha Garg and Mr. Nitin Garg, Adv
for R-5

+ MAC.APP. 209/2017 and CM 8906/2017

SHWETA RAI Appellant

Through: Ms. Neha Garg and Mr. Nitin
Garg, Advocates

Versus

DHANI RAM AND ORS

..... Respondent

Through: Ms. Meha Aggarwal, Ms. Pranati
Bhatnagar and Mr. Gaurav Nair, Advocates
for R-3

Mr. B.P. Saxena, Adv. for R- 4 to 7

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Aman Mehta, 28 years old, working as Manager-Area Sales & Operation with a private entity suffered injuries that proved fatal in a motor vehicular accident which occurred on 06.07.2014 at about 11.51 a.m. due to the negligent driving of truck bearing registration no.HR-69A-8456 (truck), admittedly insured against third party risk for the period in question with New India Assurance Co. Ltd. (appellant in MACA 200/2017). He had been married about two months prior to the said occurrence to Shweta Rai (appellant in MACA nos.146/2017 and 209/2017). His parents, Nirmala Devi and Dilip Kumar Mehta joining his siblings, Amresh Mehta and Amita Mehta (respondents in these appeals), instituted accident claim case (suit no.3257/2016) on 20.09.2014 seeking compensation under Section 166 of the Motor Vehicles Act.

2. It is noted that in the same accident, Rajesh Kumar who was driving the motor cycle bearing registration no.DL-3SAB-9593, on the pillion of which Aman Mehta was travelling, had also died. Another accident claim case relating to the death of Rajesh had been instituted on 09.09.2014.

3. Both the claim cases were clubbed together and, on the basis of

inquiry held, the Motor Accident Claims Tribunal (Tribunal) accepted the case for compensation on the principle of fault liability awarding Rs.1,31,00,224/- as compensation in the case relating to the death of Aman Mehta. The Tribunal found the siblings of the deceased Aman Mehta not to be entitled to any compensation. It apportioned Rs.2,01,000/- as compensation in favour of the father of the deceased and divided the balance in equal proportions in favour of the mother and the wife. The liability to satisfy the award was fastened against the insurance company.

4. The insurance company has come up with appeal (MACA 200/2017) questioning the computation of loss of dependency taking exception to the inclusion of the element of future prospects of increase to the extent of 50%.

5. The wife Shweta Rai, on the other hand, has come up with two separate appeals, one questioning the computation and the other raising grievances about the apportionment in equal terms in favour of the mother of the deceased, her claim being that she was entitled to larger share. On computation, it is claimed that the salary has not been properly construed on the basis of evidence adduced. Therefore, the award towards loss of dependency is deficient.

6. On the question of calculation of loss of dependency, the contentions of both sides will have to be rejected. The amount of Rs.79,828/- is clearly reflected in the evidence to be cost to the company, which is not the same as the salary and allowances actually paid to the deceased employee. The Tribunal has correctly gone by Rs.73,493/- as the total emoluments earned in the capacity of

Manager with M/s. SSIPL Retails Ltd., the terms of engagement with which entity were duly proved by Uma Shankar Pandey (PW-3), Executive (HR) including by proving the appointment letter (Ex. PW-3/A) and emolument review letters (Ex. PW-3/B, PW-3/C and PW3/D). The evidence of PW-3 clearly brought out irrefutably that the service in which the deceased was engaged by the private company was regular and given the nature of employment, it would undoubtedly result in periodic rise in the income, as is further confirmed by the emoluments review letters of 2011, 2013 and 2014. Therefore, the element of future prospects of increase taken into consideration by the tribunal cannot be grudged.

7. The question of the apportionment of the compensation in the present case was indeed a critical task for the tribunal. The marriage of the appellant Shweta Rai with the deceased was only two months old. On being asked, the counsel appearing on her behalf fairly concedes that there is no child begotten out of the marriage. At the same time, the mother had her spouse (father of the deceased), who is an employee with Railways to look upto for sustenance. In these circumstances, it was not proper to apportion the balance of the amount of compensation equally amongst the wife and the mother. Though the claim of the mother could not be reduced to the same level as at which the father has been granted compensation, given the composition of the family, it is found just and proper, as is now agreed on behalf of the wife, that the share of the mother and the wife of the deceased in the balance of the award (i.e. excluding the share of the father) is kept in the ratio of 40% and 60% respectively. The

apportionment of the award is accordingly modified.

8. By order dated 06.03.2017 in MACA 200/2017, the insurance company had been directed to deposit the awarded amount with the tribunal as a pre-condition to stay against the operation of the impugned award, though 50% of the said amount was allowed to be released in the manner and ratio determined by the impugned judgment.

9. The learned counsel appearing for the insurance company submits that under the law it was obliged to deduct tax at source against the interest and that there has been an omission in that regard on its behalf. The insurance company is allowed to take back the balance of the money lying with the tribunal and redeposit the balance of its liability in terms of the award hereby modified after deduction of tax, if and as required under the law, within 30 days of today. Needless to add, while making such deposit, the insurance company will also be obliged to make available proper certificates of deduction of tax at source to each claimant.

10. The amount re-deposited by the insurance company shall be released by the tribunal in accordance with the modified apportionment.

11. The statutory deposit made by the insurance company in its appeal shall be refunded.

12. These appeals alongwith the pending applications are disposed of in above terms.

R.K.GAUBA, J.

AUGUST 23, 2017/yg