$~R-92

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

Decided on: 25th July, 2017

\+ MAC.APP. 420/2009 and CM APPL.12246/2009

KAMLESH & ORS. ..... Appellants

Through: Nemo.

versus

RAHUL DHINGRA & ORS. ..... Respondents

Through: Ms. Nanita Sharma Advocate for R-3.

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

<u>JUDGMENT (ORAL)</u>

1. Mr. Chaman Lal, then aged 41 years old, died as a result of the injuries suffered in a motor vehicular accident that occurred on 28.02.2007, statedly due to negligent driving of Maruti Esteem car bearing registration no.DL-3CF-2128, admittedly insured against third party risk with the third respondent for the period in question. His wife and son (the appellants) instituted accident claim petition (Petition No.290/2007) on 07.07.2007 seeking compensation. The Motor Accident Claims Tribunal (the Tribunal) after inquiry, by judgment dated 10.02.2009, accepted the claim on the principle of fault liability, the findings returned in which regard have attained finality. By the impugned judgment, the tribunal awarded compensation in the total sum of Rs.6,17,600/- with interest @ 9% per annum in their favour directing the insurance company to pay. This amount of compensation was inclusive of Rs.5,07,600/- calculated

towards loss of dependency, besides Rs.50,000/- each towards loss of consortium and loss of love and affection and Rs.10,000/- towards funeral expenses.

2. The present appeal was filed in August, 2009 seeking enhancement. Since the liability to indemnify was admitted by the insurance company, notice was issued restricted to the said party only.

3. The appeal was admitted and put in the category of *'REGULAR MATTERS'* by order dated 05.04.2010. It was earlier referred to Lok Adalat where it could not be amicably settled. When the appeal was called out last on 27.01.2011, there was no appearance on the side of the appellants. Same is the position today. This appeal, being one of the oldest on board of this Court, ought not be adjourned yet again.

4. Having heard the learned counsel for the insurance company and having gone through the tribunal's record, this Court finds no substance in the contentions urged in the appeal that the evidence of the claimants about earnings from private entity named U.K. Enterprises, located at C-3/32, Dayalpur Extension New Delhi, as adduced through evidence of Surender Singh (PW-3), should have been believed. The tribunal has given good and sound reasons to reject the testimony based on vouchers (Ex.PW-3/1 to Ex.PW-3/10). The said vouchers are stand-alone record with nothing reflected in the account books of the firm where the deceased is stated to have been employed on daily basis. PW-3 admitted, during his cross-examination, that no copies of the vouchers were maintained nor any serial number given to them, there being nothing in the muster roll

register, or wage register of the firm, regarding employment of the deceased. In above facts and circumstances, the tribunal correctly adopted the minimum wages as a bench mark to assess the loss of dependency.

5. At the same time, however, it is noticed that the award under the non-pecuniary heads of damages is inadequate. Following the view taken in *Rajesh & Ors. vs. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala vs. Gangalakshmamma* (2015) 9 SCC 150, compensation in the sum of Rs.1 lakh each on account of loss of love & affection and loss of consortium and Rs.25,000/- each towards loss of estate and funeral expense are granted. This would mean, there would be a net increase of (Rs.2,50,000/- minus Rs.1,10,000/-) Rs.1,40,000/- only.

6. Ordered accordingly. The enhanced portion of the award shall also carry interest @ 9% per annum from the date of filing of the petition till realization. Having regard to the facts and circumstances of the case, the entire enhanced portion of the award with corresponding interest shall be paid to the first appellant (widow).

7. The enhanced portion of the award along with interest in terms of the above modification shall be deposited by the third respondent (insurance company) with the tribunal within thirty days, whereupon the tribunal shall issue a notice to the claimant, releasing the same in her favour in the form of fixed deposit receipt taken out in a nationalized bank for a period of four years.

8. The appeal is disposed of in above terms.

9. *Dasti.*

R.K.GAUBA, J.

JULY 25, 2017
vk