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

Decided on: 25th October, 2017

+ **MAC APPEAL No.576/2011**

INDU DEVI & ORS.

..... Appellant

Through: None.

versus

ALISHER & ORS.

..... Respondents

Through: Mr. R.B. Shami, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Ram Narayan Tiwari, aged about 37 years, earning his livelihood as part time driver, suffered injuries in a motor vehicular accident that occurred on 06.05.2006 due to negligent driving of a three wheeler scooter (TSR) bearing registration no. UP 16J 9443, which was admittedly insured against third party risk for the period in question with the third respondent (insurer). His wife and other members of the family dependent on him, they being the appellants (collectively, the claimants), instituted accident claim case (MACT No. 348/2007) on 24.04.2007 seeking compensation. The tribunal after inquiry, by judgment dated 09.03.2011, accepted the case for compensation holding the TSR driver responsible. The compensation in the total sum of Rs. 8,34,160/- was awarded with interest @ 7.5%

per annum in favour of the claimants, the liability having been fastened on the insurer.

2. The claimants are in appeal seeking enhancement. The appeal was put in the list of 'regulars', to come up on its own turn by order dated 19th February, 2016. Thereafter it was taken up for exploring the possibility of amicable settlement before the Lok Adalat lastly on 1st May, 2017 but with no fruitful results. When it is called out for hearing, there is no appearance on behalf of the claimants/appellants. The matter has been heard with the assistance of the counsel for the insurer.

3. The grievance raised in the appeal that the income of the deceased should have been taken in the minimum of Rs. 12,000/- per month is unfounded. Since no clear or cogent evidence in this regard was mustered. Thus, the tribunal was constrained to go by the minimum wages payable to a skilled worker.

4. The contention that the multiplier of 16 should have chosen is again incorrect, in view of the ruling in *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121. The multiplier of 15 has been correctly applied by the tribunal.

5. The grievance about the medical expenditure to the tune of Rs. 16,570/- having not been included, is found to be correct as the evidence in this regard led through Indu Devi (PW-1), on the strength of her affidavit (Ex.PW-1/A), appears to have escaped the notice of the tribunal. The said error would need to be rectified now.

6. It is noted that the tribunal has awarded Rs. 10,000/- each towards loss of consortium and loss to estate, Rs. 60,000/- towards

loss of love and affection and Rs. 5,000/- on account of funeral expenses. These awards are deficient. Following the ruling 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. 1,00,000/- 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 added.

7. Thus, the total compensation comes to (7,49,160 + 16,570 + 1,00,000 + 1,00,000 + 25,000 + 25,000) Rs. 10,15,730/-, rounded off to Rs. 10,16,000/- (Rupees Ten Lacs and Sixteen Thousand Only).

8. The award is modified accordingly. Following the consistent view taken by this court, the rate of interest is increased to 9% (nine per cent) annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*]

9. The insurer is directed to deposit the entire enhanced portion of the award with corresponding interest with the tribunal within thirty days. It is directed that the enhanced portion with corresponding interest shall fall to the share of first appellant Indu Devi (widow) alone. It is clarified that this would not disturb the recovery rights already granted to the insurer.

10. The appeal is disposed of.

R.K.GAUBA, J.

OCTOBER 25, 2017

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