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

Decided on: 18th September, 2017

\+ MAC.APP. 447/2010

BABLI & ORS. ..... Appellants

Through: Nemo.

Versus

SATYAVEER & ORS. ..... Respondents

Through: Mr. Pankaj Gupta, Advocate for Ms. Suman Bagga, Advocate for R-3

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

<u>JUDGMENT (ORAL)</u>

1. Phool Singh died due to injuries suffered in a motor vehicular accident that occurred on 15.09.2008, due to negligent driving of truck bearing registration No.HR-47A-6577 (the truck), it admittedly being insured against third party risk with the third respondent (insurer). His wife and other members of the family dependant on him, they being appellants herein (collectively, the claimants), instituted accident claim case (Suit No.639/2008) on 25.11.2008 seeking compensation. The tribunal held inquiry and, by judgment dated 13.04.2010, upheld the case for compensation holding the truck driver Satyaveer (respondent no.1) responsible for negligent driving leading to the fatal accident. He and the registered owner of the vehicle, Rajesh Kumar

(second respondent) were held jointly and severally liable. The tribunal assessed the compensation thus:-

Sl.No.	**Head**	**Amount in (Rs.)**
1.	Compensation for loss of dependency	9,99,425/-
2.	Compensation for loss of Consortium	10,000/-
3.	Compensation for loss of estate	10,000/-
4.	Compensation for funeral expenses	5,000/-
5.	Compensation for loss of love and affection	50,000/-
	Total	10,74,425/-

2. The tribunal called upon the insurer (the third respondent) to pay above mentioned amount with interest @ 7.5% per annum.

3. Aggrieved with the award, terming it deficient, the present appeal was filed by the claimants. It was put in the list of *'REGULARS'* as per order dated 31.03.2011. Though it was taken up for exploring the possibility of amicable settlement on some dates, such settlement having not been achieved, when taken up for hearing, there is no appearance for the appellants/claimants. The matter has been considered with the assistance of the learned counsel for the third respondent.

4. The contention urged in appeal about the inadequacy of the award is found to be correct. The record of the tribunal shows the claimants had proved income tax returns (ITRs) of the deceased for

the assessment years (AYs) 2004-05, 2005-06, 2006-2007 and 2007-2008 (Ex.PW-1/18, Ex.PW-1/17, PW-1/16 and Ex.PW-1/15 respectively), the income declared being in the amounts of Rs.60,000/-, 91,750/-, 1,01,500/-, and 1,02,790/-. The tribunal made calculations on the basis of last declared income of Rs.1,02,790/-. Indeed, the ITRs had shown progressive rise in income on which account the element of future prospects of income, to the extent of 30% should have been added in the calculations, the age of the deceased at the time of the death being 49 years. [See: judgment dated 28.03.2016 in MAC.APP. 548/2013 *United India Insurance Co. Ltd. v. Kamla & Ors*.].

5. It is noted that the tribunal has found that there are four dependents who were dependents on the earnings of the deceased and thus applied deduction on account of personal and living expenses to the extent of one-fourth, invoking the multiplier of 13. Having regard to the rate of income tax levied for the relevant period, no deduction on account of income tax liability is to be made.

6. Calculating afresh, the loss of dependency, thus, works out at (1,02,790/- x 130/100 x 3/4 x 13) Rs.13,02,863.25, rounded off to Rs.13,03,000/- (Rupees Thirteen Lakhs three thousand only).

7. The non-pecuniary heads of damages included in the award are also deficient. 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 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 added. Thus, the total compensation comes to (13,03,000/- + 1,00,000/- + 1,00,000/- + 25,000/- + 25,000/-) Rs.15,53,000/- (Rupees Fifteen Lakh Fifty Three Thousand Only).

8. The award is enhanced accordingly.

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

10. It is directed that the entire enhanced award with corresponding interest shall fall to the share of the first appellant Babli (widow) only. It to be released in her favour in the form of interest bearing fixed deposit receipt, to be taken out from a nationalized bank for a period of seven years with right to draw periodic interest.

11. The insurance company (third respondent) is directed to satisfy the enhanced award by requisite deposit with the tribunal within thirty days, making it available to be released to the claimants.

12. The appeal stands disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 18, 2017
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