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

Decided on: 26th July, 2017

\+ MAC APPEAL No.371/2009

NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through: Mr. Pankaj Seth, Adv.

versus

CHHOTEY LAL & ORS. ..... Respondents
Through: Mr. Amit Kumar Pandey, Adv. for R-1.

\+ MAC APPEAL No.142/2017

CHHOTEY LAL & ORS. ..... Appellants
Through: Mr. Amit Kumar Pandey, Adv.

versus

NEW INDIA ASURANCE CO. LTD. ..... Respondents
Through: Mr. Pankaj Seth, Adv.

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

JUDGMENT (ORAL)

1. Vijay Kumar Gautam, 23 year old, a bachelor, died due to injuries suffered in a motor vehicular accident that took place on 26.06.2006 on account of negligent driving of bus bearing registration no. DL 1PB 4600, admittedly insured against third party risk with New India Assurance Company Ltd. (appellant in MAC appeal No. 371/2009). His parents (appellants in MAC Appeal No. 142/2017)

instituted accident claim case (suit no. 292/2006). The tribunal held inquiry, and by judgment dated 11.05.2009, found a case made out for award of compensation on principle of fault liability and awarded compensation in the sum of Rs. 3,85,000/- with interest @ 9 per cent per annum, this inclusive of Rs. 5,000/- towards funeral charges and Rs. 25,000/- for loss of love & affection and balance on account of loss of dependency, the last element having been computed on the basis of minimum wages of unskilled labour (Rs.3,280/-) from which 50% was deducted towards personal & living expenses, the multiplier of 18 having been applied.

2. The insurer, by its appeal (MAC appeal no. 371/2009), questions the award pressing it only on the ground that the multiplier should have been adopted according to the age of the parents rather than according to the age of the deceased. This contention is fairly conceded by the learned counsel for the claimants (appellants in MAC Appeal No. 142/2017), with reference to decisions of Supreme Court in *Kerala State Road Transport Corporation V. Susamma Thomas* (1994) 2 SCC 176 and *U.P.S.R.T.C. vs Trilok Chandra* (1996) 4 SCC 362 and of this Court in MAC Appeal No. 431/2016 titled as *National Insurance Company Ltd. vs. Mohammed Siddique & Ors.* decided on 18.07.2017. The claimants, however, point out and press their appeal on the contention that the non-pecuniary damages awarded are inadequate.

3. As per the ration card (Ex.PW-1/1) (page 115 of the tribunal's record), the mother (Prabhawati) was born on 12.03.1960. In this view, on the date of the accident she was 46 years old. Therefore, the

multiplier of 13 would apply and loss of dependency is re-computed as (3280 ÷ 2 x 12 x 13) Rs. 2,55,840/- rounded off to Rs. 2,56,000/-

4. 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 on account of loss of love & affection and Rs.25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation comes to Rs. (2,56,000 + 1,00,000 +25,000 + 25,000) Rs. 4,06, 000/-.

5. The award is modified accordingly. It shall carry interest as levied by the tribunal. The entire enhanced portion of the award shall go to the second claimant, mother (Prabhawati).

6. The insurance company had deposited the entire awarded amount in terms of the order dated 04.08.2009 which was released to the claimants by order dated 13.10.2009. The insurance company shall now satisfy the enhanced award by requisite deposit with the tribunal within 30 days, making it available to be released.

7. The statutory deposit made by the insurance company shall be refunded.

8. Both appeals are disposed of in above terms.

R.K.GAUBA, J.

JULY26, 2017
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