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

Decided on: 1st November, 2017

+ **MAC APPEAL 792/2011**

PRAVESH KUMAR KHARBANDA & ORS Appellants
Through:

versus

RAJ SINGH & ORS. Respondents

Through: Mr. A.K. Soni, Advocate for R-
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CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Asha Kharbanda, suffered injuries in a motor vehicular accident that occurred on 24.11.2007 due to the negligent driving of truck bearing registration no.DL-1GB-4525 by the first respondent (driver), the said vehicle being registered in the name of the second respondent (owner) and concededly insured against third party risk with the third respondent (insurer) for the period in question. She remained under treatment but succumbed to the injuries on 10.06.2008.

2. On 20.10.2008, the husband and two sons of the victim instituted accident claim case (MACT suit no. 633/2008) impleading the driver, owner and insurer of the said truck as party respondents, they being respondents in the same order in the appeal as well. On the basis of the inquiry held, the Motor Accident Claims Tribunal (Tribunal), by judgment dated 20.05.2011, upheld the case holding

the truck driver / first respondent guilty of negligence. The tribunal awarded compensation in the total sum of Rs.11,43,205/- adding the interest at the rate of 7.5% p.a. The insurer had taken the plea of breach of the terms and conditions of the insurance policy on the ground that the driver was not holding a valid licence on the relevant date. This fact was held to be proved and thus, the insurer which was called upon to pay the compensation was also granted recovery rights against the driver and owner (i.e. the first and second respondents respectively).

3. The appeal at hand was filed seeking enhancement of compensation. It was put in the list of 'Regulars', to come up on its own turn as per order dated 19.02.2016. When it is taken up for hearing, there is no appearance on behalf of the appellants or second respondent. The matter has been heard with the assistance of the learned counsel representing the third respondent and by perusal of the record.

4. The tribunal has found that the victim was 47 years old on the date of cause of action. It held that she was earning livelihood by running a boutique from her residence. In order to substantiate the said engagement of the deceased in gainful work, the claimants had proved the Income Tax Returns (ITRs) for several years (Ex. PW1/19 to 24). The last of the said ITRs (Ex. PW1/24) was filed on 28.03.2008 and is for the assessment year (AY) 2007-2008 which would correspond to the financial year 2006-2007. Since the said financial year would close on 31.03.2007, the accident having occurred in November 2007, there is no reason why the income

declared in the said ITR should have been ignored and the income for the preceding assessment year 2006-2007 (which would correspond to financial year 2005-2006) should be adopted.

5. The tribunal, it is noted, has also committed another error by making a deduction of 45% of the annual income towards overhead expenses. It had to be borne in mind that the income was declared by the individual after taking into account the profit and loss account which would also cover the expenditure incurred. Therefore, there was no logical reason for such deduction. The calculation of loss of dependency would thus need to be made accepting the last declared annual income of Rs.1,36,110/-.

6. The deceased was a self-employed person and having regard to the ruling of the Constitution Bench of the Supreme Court rendered on 31.10.2017 in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors*, 25% has to be added towards future prospects, regard being had to the fact that the deceased was 47 years old at the relevant point of time. The addition of 50% by the tribunal on this account, thus, is found to be erroneous.

7. Deducting one-third towards personal and living expenses and applying the multiplier of 13, the loss of dependency is re-calculated as $[Rs.1,36,110/- \times 125 / 100 \times 2/3 \times 13]$ Rs.14,74,525/-. Since the tribunal had reached the figure of Rs.6,89,020/- under the head of loss of dependency, the award would need to be enhanced by $[Rs.14,74,525/- (-) Rs.6,89,020/-]$ Rs.7,85,505/- (Rupees Seven Lakh, Eighty Five thousand, five hundred and five only).

8. It is noted that in the memo of appeal, the claimants have also taken exception to the amount of Rs.4,40,000/- only being awarded towards medical expenses. The contention is that the expenditure was to the tune of Rs.6,69,414/-. Since the tribunal has gone by the documents properly proved, there is no justification for any increase under this head. The claim in the appeal for award to also be granted under the head of pain and suffering cannot be accepted as the case was brought as a fatal accident claim.

9. The total compensation awarded by the tribunal is, thus, increased to [Rs.11,43,205/- + Rs.7,85,505/-] Rs.19,28,710/-, rounded off to Rs.19,29,000/- (Rupees Nineteen Lakh and twenty nine thousand only).

10. Following the consistent view taken by this Court, the rate of interest is increased to 9% per 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.*]

11. It is directed that the entire enhanced portion of the award with corresponding interest shall be paid to the first appellant (husband) in the form of interest bearing fixed deposit receipt taken out from a nationalized bank initially for a period of five years with provision for auto renewal with right to draw periodic interest. The insurer is directed to satisfy the enhanced award by requisite deposit with the tribunal within 30 days making it available to be released to the claimant. It is made clear that this does not disturb the recovery rights granted to the insurer.

12. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 01, 2017

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