

\$~20

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

*Decided on: 02<sup>nd</sup> August, 2017*

+ **MAC.APP. 493/2008**

**VIJAY MOHAN & ANR**

..... Appellants

Through: None

versus

**PAWAN KUMAR & ORS**

..... Respondents

Through: Mr. Pankaj Seth, Advocate for R-3

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT (ORAL)**

1. Pankaj Kumar, a bachelor, employed with Delhi Airport Service Pvt. Ltd as a Cargo Executive, died in a motor vehicular accident that had occurred on 06.04.2006 due to negligent driving of a bus bearing registration no.DL-1PB-1738, which was admittedly insured against third party risk with the third respondent (insurer) for the period in question. His parents and two siblings jointly filed an accident claim case (petition no.427/2006) impleading the insurer as a party in addition to the driver and the owner of the bus, they being the first and second respondents herein.

2. After inquiry, the Motor Accident Claims Tribunal (Tribunal) rendered its decision by judgment dated 27.05.2008 holding that a case for claim for compensation on no fault liability principle had been made out. It awarded compensation in the total sum of

Rs.7,20,000/- and directed the insurer to pay with interest at the rate of 9% p.a. in favour of the heirs (the appellants, herein). The said amount of compensation included Rs.6,60,000/- calculated as loss of dependency besides Rs.10,000/- towards funeral expenses and Rs.50,000/- on account of loss of love and affection.

3. The appeal at hand was filed seeking enhancement raising contentions about inadequacy of the calculation on account of loss of dependency and under non-pecuniary heads of damages.

4. The appeal was admitted and directed to be listed in the category of 'regulars' by order dated 08.02.2017. When it came up for hearing, neither side appeared. In spite of notice duly served on the claimant and their counsel, there is no appearance on their behalf.

5. The learned counsel for the insurer on which the liability was fastened has been heard and the record perused.

6. It is found that there is a case made out for the award of compensation to be revised. It is noted that the claimant had proved, *inter alia*, through the evidence of Krishan Kant Sharma (PW-4), an Executive (HR) of Delhi Airport Service Pvt. Ltd., that the deceased was employed as a Cargo Executive at emoluments of Rs.10,000/- p.m. It was a contractual job initially for a period of one year. There was no reason, in the face of such evidence, for the Tribunal to take the wages at reduced rate of Rs.7,500/- p.m. The Tribunal further fell into error by making a deduction of one-third towards personal and living expenses forgetting that it was a claim in the case of a death of a bachelor. Having taken note of the age of the parents (51 years and 45 years respectively) it invoked the wrong multiplier of 11. The award

under the non-pecuniary heads of damages is also found to be deficient.

7. Thus, the calculation on loss of dependency is redone. Deducting 50% towards personal and living expenses, and applying the multiplier of 13 which should have been appropriate, against the last drawn income of Rs.10,000/-, the loss of dependency is calculated as  $(Rs.10,000 / 2 \times 12 \times 13)$  Rs.7,80,000/-.

8. Following the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, non-pecuniary damages in the amounts of Rs.1 Lakh towards loss of love and affection and Rs.25,000/- each towards loss to estate and funeral expenses are added. Therefore, the total compensation comes to  $(Rs.7,80,000/- + Rs.1,00,000/- + Rs.25,000/- + Rs.25,000/-)$  Rs.9,30,000/-.

9. The award is modified accordingly. It shall carry interest as levied by the tribunal.

10. The third respondent shall satisfy the enhanced portion of the award by depositing it with the tribunal within thirty days of today, the entire enhanced portion with corresponding interest shall be released by the Tribunal in the name of the second claimant (appellant / mother) in the form of fixed deposit receipt in a nationalized bank for a period of five years with right to draw monthly interest.

11. The appeal is disposed of in above terms.

**R.K.GAUBA, J.**

**AUGUST 02, 2017**

yg