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

Decided on: 23rd August, 2017

\+ MAC.APP. 335/2017 and CM APPL.15885/2017

GANGA BASI & ANR ..... Appellants

Through: Mr. Rahul Rohtagi, Advocate

versus

RAM CHET SINGH & ORS (UNITED INDIA INSURANCE CO LTD) ..... Respondents

Through: Mr. Priyadarsi Acharya, Advocate for Mr. K.L. Nandwani, Advocate for R-3.

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

JUDGMENT (ORAL)

1. Yogesh, aged 26 years, a bachelor, suffered injuries in a motor vehicular accident that occurred on 31.12.2014 and died in the consequence, the accident involving negligent driving of truck bearing registration No.HR-38-H-6291, admittedly insured against third party risk with the third respondent (insurer).

2. On the claim proceedings arising out of the Detailed Accident Report (DAR), submitted by the local police pursuant to the investigation into the corresponding FIR No.1/2015 of Police Station Okhla Industrial Area, the Motor Accident Claims Tribunal (the tribunal), by judgment dated 18.03.2016, awarded compensation in the total sum of Rs.6,78,982/-, it inclusive of Rs.5,03,982/- towards loss of dependency, Rs.1 lakh towards loss of love and affection,

Rs.50,000/- towards loss of estate and Rs.25,000/- towards funeral expenses. The insurance company has been directed to bear the said responsibility with interest @ nine per cent (9%) per annum.

3. The claimants are in appeal seeking enhancement of compensation. At the hearing, it is pointed out that the tribunal had taken the income of the deceased at Rs.9,333/- per month, which is less than the minimum wages payable to a matriculate at the relevant point of time. It is submitted that though this was the contention urged by the claimants, the tribunal was duty bound to award just compensation which cannot be based on considerations in breach of the law. The claimants contention that the minimum wages at Rs.10,478/- as payable to a matriculate at the relevant point of time be treated as the bench mark must be accepted.

4. The claimants further pointed out that though the claim for compensation was also on behalf of the mother (the second appellant), the multiplier has been chosen on the basis of higher age of the father (first appellant) without any justification. It is noted that, in the course of his testimony, the first appellant, appearing as PW-1, had stated that the age of the mother of the deceased at the relevant date was 55 years. His testimony to such effect remained unimpeached. In these circumstances, the loss of dependency had to be worked out with the multiplier of 11. Thus, the loss of dependency is re-computed as (10,478/- ÷ 2 x 12 x 11) Rs.6,91,548/- rounded off to Rs.6,92,000/- (Rupees six lacs ninety two thousand only).

5. It is noted that the award under the heads of loss of love and affection and funeral expenses is deficient. Following the view in MAC.APP.No.160/2015, titled *Shriram General Insurance Co Ltd v. Usha* decided by this court on 05.05.2016, having regard to the date of accident, the awards under the said heads are increased to Rs.1,50,000/- towards loss of love & affection and Rs.50,000/- towards funeral expense. Adding the award granted by the tribunal on account of loss to estate, the total compensation comes to (Rs.6,92,000/- + 1,50,000/- + 50,000/- + 50,000/-) Rs.9,42,000/-. (Rupees Nine Lakhs Forty Two Thousand Only).

6. The award is enhanced accordingly. It shall carry interest as levied by the tribunal.

7. It is directed that the entire enhanced portion of the award with corresponding interest shall fall to the share of the second appellant (mother) alone. It to be released in her favour in the form of interest bearing fixed deposit receipt to be taken out from a nationalized bank in her name for a period of seven years with right to draw monthly interest.

8. The insurer is directed to satisfy the award by requisite deposit with the tribunal within thirty days.

9. The appeal along with accompanying application is allowed in above terms.

10. *Dasti.*

R.K.GAUBA, J.

AUGUST 23, 2017/vk