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

Decided on: 08th August, 2017

\+ MAC APPEAL 480/2009

MANOJ SHARMA & ANR ..... Appellants
Through: None

versus

SAROJ SINGH & ANR. .... Respondents
Through: Mr. Kanwal Chaudhary, Adv. for R-2

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

JUDGMENT (ORAL)

1. Rajender Sharma, a pensioner from Delhi Vidyut Board, then aged 66 years, earning pension of Rs.8,556/- p.m. died, alongwith his wife Prabha Sharma (aged 59 years), working as Under Secretary with the Election Commission of India in a motor vehicular accident that occurred on 17.06.2006, involving the negligent driving of a bus bearing registration no.DL-1PB-3875, admittedly insured against third party risk for the period in question with the second respondent (insurer). Two accident claim petitions were filed, both by the appellants herein, one (suit no.878/2006) on account of death of Rajender Sharma and other (suit no.879/2006) on account of the death of Prabha Sharma, the appellants being major son and daughter respectively of the deceased persons. Both the claim petitions were

clubbed for inquiry on the conclusion of which the Motor Accident Claims Tribunal (Tribunal), by judgment dated 26.05.2009, upheld the claim for compensation on the principle of fault liability, the said finding having attained finality as it was not challenged.

2. In the case of death of Rajender Sharma, from which the present appeal arises, compensation in the sum of Rs.30,000/- only had been awarded and the insurer was directed to pay the same, the said amount inclusive of Rs.10,000/- each towards loss of consortium, loss to estate and funeral expenses. The tribunal held that since the claimants are married persons, they being well settled in life, were not dependent and, thus, had not suffered any monetary loss. Therefore, no separate award was made under the head of loss of dependency.

3. The appeal was filed questioning the above view taken by the tribunal, the grievance primarily being that the compensation awarded is niggardly and grossly inadequate.

4. When the appeal is taken up for hearing, no one has appeared for the appellants to assist. The learned counsel for the insurance company (second respondent) has been heard and the record has been perused.

5. While the view taken by the tribunal that there was no loss of dependency in strict sense of the term may be correct, the method of calculation of loss to estate cannot be approved of. There is no basis on which the amount of Rs.10,000/- under the said head of compensation was determined. It may be that the deceased was 66 years old and his two children (claimants) were settled in their respective lives. But, the fact remains that his wife Prabha Sharma

was then still employed and on account of death in her case, the tribunal, by the very same judgment, calculated the loss of dependency in favour of these very claimants. A pensioner does not necessarily spend the entire money earned by him on himself or on his spouse. The societal norms will have to be kept in mind. Just as the children would look up to their mother Prabha Sharma for occasional support, Rajender Sharma, a pensioner, would also spare some of his resources for occasional support for his children. His death would not come as loss of dependency. But, undoubtedly, the savings he would make in due course, would result in loss to estate.

6. In the facts and circumstances of the present case where his wife was also an earning hand and going by the then standards, she earning well, loss to estate in the form of one-third of the pension saved for the rainy day would have to be factored in and translated into damages to the surviving members of the family.

7. The tribunal has held that the last income was in the sum of Rs.8,556/- p.m. as pension from Delhi Vidyut Board. Going by the age of 66 years, there is no occasion for any element of future prospects to be added, the multiplier of 5 deemed appropriate. Thus, the loss to estate is calculated as (Rs.8,556/- / 3 x 12 x 5) Rs.1,71,120/-, rounded off to Rs.1,72,000/-.

8. In the claim case where compensation is sought on account of death of the father, there is no occasion for damages under the head of loss of consortium. Instead, loss of love and affection had to be taken care of alongside the funeral expenses.

9. The death having occurred in June 2006, following the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54 and Shashikala V. Gangalakshmamma (2015) 9 SCC 150*, Rs.1 Lakh is added towards loss of love and affection and Rs.25,0000/- is added towards funeral expenses.

10. Thus, the total compensation in the case comes to (Rs.1,72,000/- + Rs.1,00,000/- + Rs.25,000/-) Rs.2,97,000/-. The award is enhanced accordingly. Needless to say, it shall carry interest as levied by the tribunal.

11. The amount of compensation, as modified above, shall be equally apportioned in favour of the two appellants. The second respondent (insurer) is directed to satisfy the award by making requisite deposit with the tribunal within 30 days making it available to be released to the appellants who shall be duly informed by a copy of this judgment being served on them.

12. The appeal is disposed of in above terms.

R.K.GAUBA, J.

AUGUST 08, 2017
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