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

Decided on: 08th August, 2017

\+ MAC APPEAL 466/2009 and CM 13571/2009

BABLI & ORS. ..... Appellant

Through: None

versus

SABBIR & ORS. ..... Respondents

Through: Mr. A.K. Soni, Adv. for R-3

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

JUDGMENT (ORAL)

1. Bijender, born on 08.07.1964, having served in Indian Air Force in the rank of Sergeant, having been discharged from the said service on completion of 20 years of engagement, employed at the time as Facility Engineer with private entity Johnson Controls India Pvt. Ltd., suffered injuries in a motor vehicular accident that occurred on 21.11.2006 and died in the consequence, the mishap having occurred due to the negligent driving of a truck bearing registration no.UP-14K-5409 admittedly insured against third party risk with the third respondent (insurer) for the period in question. His widow and other members of the family dependent upon him (collectively, the claimants), they being the appellants herein, instituted (accident claim case 111/2009) on 02.07.2007 seeking compensation.

2. After inquiry, the Motor Accident Claims Tribunal (Tribunal), by judgment dated 27.05.2009, upheld their case for compensation on the principle of fault liability holding the driver of the above mentioned vehicle to be negligent, such finding having attained finality as it was not challenged. By the said judgment, the Tribunal awarded compensation in the total sum of Rs.18,13,008/-, it having been calculated thus :-

Loss of financial dependency	Rs.17,23,008/-
Loss of love and affection	Rs.40,000/-
Loss of consortium	Rs.40,000/-
Funeral Expenses	Rs.5,000/-
Loss to estate	Rs.5,000/-
Total	Rs.18,13,008/-

3. The insurer was directed to pay the above mentioned amount with interest at the rate of 7.5% p.a.

4. The claimants filed the present appeal seeking enhancement of the compensation on the ground the award was inadequate.

5. The appeal was admitted and directed to be put in the category of 'Regulars' by order dated 05.04.2010. When it is taken up for hearing, there is no appearance on behalf of the appellants. Having regard to the nature of the appeal, the presence of third respondent on which liability was fastened having been secured, there is no reason why the appeal should be dismissed in default.

6. The matter has been heard and examined with the assistance of the counsel for the insurer.

7. There are indeed errors in the calculation of compensation by the tribunal. While the exclusion of the pension at Rs.4,000/- p.m. earned from Indian Air Force was correct in that the widow admitted at the inquiry that she was still in receipt of the some amount, the element of future prospects of increase should have been entered. The tribunal accepted the evidence of Chander Prasad (PW-2), Manager (Finance) of the entity where the deceased was working for gain as Facility Engineer. Having regard to the nature of service in which he was employed, the element of future prospects had to be factored in to the extent of 30%.

8. The tribunal made deductions on account of personal and living expenses by applying the unit method. Following the ruling in *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121*, the proper course would be to deduct taking into account the number of dependents. The claimants included two sisters who had come of age, the parents of the deceased also being amongst the claimants. In these facts and circumstances, it was not correct to include them amongst the claimants so as to calculate the loss of dependency. In these circumstances, the proper course would be to make a deduction to the extent of one-fourth. Having regard to the age at which the death occurred, however, multiplier of 14 was correctly applied.

9. Thus, the loss of dependency is re-calculated as (Rs.13,070/- x 130/100 x 3 /4 x 12 x 14) Rs.21,40,866/-, rounded off to Rs.21,41,000/-.

10. In view of the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54 and Shashikala V. Gangalakshmamma (2015) 9 SCC 150*, non-pecuniary damages awarded by the tribunal are found to be deficient. Therefore, instead of the awards made by the tribunal, compensation in the sum of Rs.1 Lakh each towards loss of love and affection and loss of consortium and Rs.25,000/- each towards loss to estate and funeral expenses are added.

11. In view of the above, the total compensation comes to (Rs.21,41,000/- + Rs.1,00,000/- + Rs.1,00,000/- + Rs.25,000/- + Rs.25,000/-) Rs.23,91,000/-.

12. 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*.]

13. Having regard to the apportionment already made by the tribunal in favour of the other claimants, it is directed that the entire enhanced portion of the award with the effect of increase in the rate of interest shall fall to the share of the first appellant /Babli (widow), it to be released in the form of an interest bearing fixed deposit receipt taken out from a nationalized bank in her favour for a period of seven years with right to draw monthly interest.

14. The 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 claimant.

15. The appellants shall be informed by serving a copy of this judgment.

16. The appeal and the pending application are disposed of in above terms.

R.K.GAUBA, J.

AUGUST 08, 2017
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