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

Decided on: 20th July, 2017

+ **MAC APPEAL No.521/2008**

NEW INDIA ASSURANCE CO. LTD. Appellant
Through: **Mr. Kanwal Chaudhary, Adv.**

versus

HARSH WADHWAN & ORS. Respondents
Through: **Mr. Rajiv Bakshi, Adv. for R-1**
to 3.
Ms. Shilpa Dua, Adv. for R-4 &
5.

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

JUDGMENT (ORAL)

1. Surinder Kumar Wadhwani, born on 02.04.1953, working as Deputy Manager Grade II, Foreign Exchange Division, Main Branch, Parliament Street, New Delhi, sustained injuries in a motor vehicular accident that occurred on 13.12.2003 and died in the consequence. The accident was statedly caused due to negligent driving of bus bearing no. DL 1PA 2060, it admittedly being insured against third party risk with the appellant insurance company. The widow and two children of the deceased instituted accident claim case (suit no. 1111/2007) on 27.05.2004, impleading the appellant insurance

company (insurer) and the driver and owner of the offending vehicle as respondents.

2. The tribunal, after inquiry, by judgment dated 04.08.2008, upheld the case for claim of compensation on the finding that the death had occurred due to negligent driving of the bus. This finding has attained finality as it was not challenged. The tribunal awarded compensation in the sum of Rs. 42,61,280/- with interest in favour of the claimants (first to third respondents herein) and directed the insurance company to pay.

3. The insurer is in appeal questioning the computation of compensation.

4. The first contention urged at the hearing is that the tribunal went wrong in assuming the income of the deceased to be Rs.27,380/-. Reference in this context is made to the evidence of the first respondent (widow), she appearing as PW-1, stating that her husband was drawing salary in the sum of Rs. 23,587/-. But then, the contention raised ignores the fact that, through the evidence of the official of the bank PW-4, the claimants had also proved that the salary stood revised to Rs. 27381.06 with effect from November, 2003, immediately preceding the date of death, this fact having been affirmed by formal certificate (Ex.PW-4/1). In these circumstances, the finding returned by the tribunal as to the income of the deceased cannot be questioned.

5. The tribunal, however, fell in error in adopting the multiplier of 13 to ascertain the loss of dependency. The deceased was 50 years 8 months old on the date of the accident. As per the decision of the

Supreme Court in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the multiplier of 13 would apply to the age bracket 46-50 years whereas for the age bracket of 51-55 years, the multiplier of 11 applies. Since the said ruling does not guide as to the cases falling in between i.e. cases where the deceased was more than 50 years in age but less than 51, similar questions had arisen before this Court in *Oriental Insurance Co.Ltd. vs. Rekha Vashisht* MAC Appeal No. 636/2009 decided on 18.02.2016. This Court, referring to earlier decision in MAC Appeal No. 379/2004 *Delhi Transport Corporation vs. Sunita & ors.* decided on 07.08.2012, ruled thus:-

“14. Since the age of the deceased at the time of death was more than 40 years and six months, the issue raised is as to whether he is to be bracketed in the age group of 36-40 or age group of 41-45, from out of the table mentioned in (para 42 of) the judgment in Sarla Verma (supra). Faced with the similar fact situation, a learned single judge of this court, in the case of Delhi Transport Corporation vs. Sunita & ors. (supra) took the view that the multiplier has to be adopted in accordance with the nearest slab of age group as mentioned in Sarla Verma (supra). This approach seems to be correct in as much as it takes care of the grey area occurring on account of lack of clarity in the table given.”

6. In view of the above, the multiplier of 11 would have to be invoked in the present case to arrive at the loss of dependency.

7. The deceased had still around 9 years service left. He was in a regular employment of bank. It is inherent in the terms and conditions of the service in which he was engaged that there would be

progressive rise in income. Having regard to the age at the time of death, the element of future prospects of increase to the extent of 15% would deserve to be added [see judgment dated 28.03.2016 in MAC.APP. 548/2013 *United India Insurance Co. Ltd. v. Kamla & Ors.*]

8. Thus, the total compensation in the case works out as $(27380 \times 115 \div 100 \times 2 \div 3 \times 12 \times 11)$ Rs. 27,70,855.99 rounded off to Rs. 27,71,000/-.

9. It is, however, noted that the tribunal did not give adequate awards under the heads of loss to estate and consortium. It awarded Rs. 25,000/- towards loss to estate and consortium and Rs. 15,000/- towards funeral expenses. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, compensation in the sum of Rs. 1 lakh each on account of loss of love & affection and loss of consortium and Rs. 25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case is computed as $(27,71,000 + 1,00,000 + 1,00,000 + 25,000 + 25,000)$ Rs. 30,21,000/-.

10. The grievance with regard to the rate of interest is also correct. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*], the rate of interest is increased to 9% per annum from the date of filing of the petition till realization.

11. The award is modified accordingly.

12. By order dated 22.10.2008, the insurance company had been directed to deposit the entire awarded amount with the Registrar General of this Court from which 75% was allowed to be released. The tribunal had apportioned the compensation by specific amounts amongst the three claimants. In the facts and circumstances, it is directed that the amounts already released to the second and third respondent (children of the deceased) shall be treated as their share, with no entitlement to any further amount. The registry shall calculate the balance payable, if any, to the first respondent in terms of the modified award and refund the excess in deposit to the insurance company. In case excess has been released to the first respondent, she will be liable to reimburse the same.

13. The appeal is disposed of in above terms.

14. Statutory deposit shall be refunded.

JULY 20, 2017

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R.K.GAUBA, J.

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