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

Decided on: 18th August, 2017

+ MAC.APP. 518/2009 and CM APPL.14921/2009, 16534/2010

URMILA & ANR. Appellants

Through: Mr. Saurabh Kansal, Advocate

versus

SAJJAN SINGH & ORS Respondents

Through: Mr. Manoj R. Sinha, Adv. for
R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Naveen Goyal, aged about 19 years and six months, a bachelor son of the first appellant, died in a motor vehicular accident that occurred on 04.10.2005, involving collision of two motor vehicles at Rithala Road, Delhi they being motorcycle bearing registration No.DL-4S-AG-5358 (motorcycle) and truck bearing registration No.HR-55A-0552 (the truck). She filed accident claim case (Petition No.619/2008) on 08.03.2006 under Section 166 and 140 of the Motor Vehicles Act, 1988. The driver, owner and insurer of the truck, they being the first, second and third respondent herein, were impleaded as respondents in the said proceedings. The tribunal held inquiry but, by its judgment dated 01.07.2009, dismissed the petition because the

claimant had not been able to prove negligence on the part of truck driver.

2. Noticeably, in the pleadings collision between the two vehicles had been admitted. The facts that the truck was driven by the first respondent, owned by the second respondent and was insured against third party risk with the third respondent had also been admitted.

3. The appeal at hand was filed questioning the above mentioned judgment, appellant having added her husband as second appellant in these proceedings.

4. At the hearing, the learned counsel for the appellant submitted that given the fact that the use and involvement of the truck in collision leading to death is not disputed, the claim of the appellants may be treated as one pressed under Section 163-A of the Motor Vehicles Act, 1988 on the basis of no fault liability under the structured formula.

5. The learned counsel for the third respondent, on being called upon to respond submitted that he leaves the matter to the discretion of the court.

6. In the facts and circumstances, the request seems to be just and proper. The claim case of the first appellant is treated as one under Section 163-A of the Motor Vehicles Act, 1988. Given the above facts, compensation in terms of second Schedule appended to the Motor Vehicles Act, 1988 with reference to Section 163-A of the Act deserves to be computed.

7. It is noted that the first appellant, in the course of inquiry before the tribunal, had examined herself as PW-1 on the strength of her affidavit (Ex.PW-1/A), this in addition to Pramod Sharma (PW-2), Assistant Ahlmad of the court of Metropolitan Magistrate, Gulbir Singh (PW-3) record clerk from Brahm Shakti Hospital to prove the expenditure incurred in the treatment and K.D. Sharma (PW-4), record clerk from Maharaja Agrasain Hospital to prove similar expenditure incurred in that hospital.

8. In the course of her testimony as PW-1, the claimant had stated that the deceased was 20 years old and earning his livelihood by running a provisional store, from which his income was about Rs.8,000/- per month, this in addition to private service from where he would earn Rs.4950/-. Other than the oral word, however, nothing in corroboration was brought in. Mere production of salary certificates (Ex.PW-1/71 and Ex.PW-1/72) cannot be treated as good proof. In these circumstances, the income will have to be assessed only on the basis of minimum wages.

9. There is no proof of educational qualification of the deceased. In these circumstances, the income is notionally assessed at Rs.3165.90 rounded off to Rs.3166/- per month, it being the minimum wages of an unskilled worker on the relevant date.

10. It is noted that as per the driving licence (copy at page 317 of the tribunal's record), his date of birth was 04.04.1986. This would mean he was 19½ years old. In terms of dispensation in second Schedule to the Motor Vehicles Act, 1988, one-third is deducted

towards personal and living expenses, and on the multiplier of 16, the loss of dependency is computed as $(3166/- \times 2/3 \times 12 \times 16)$ Rs.4,05,248 rounded off to Rs.4,06,000/-.

11. The second Schedule restricts that medical expenses in case of death to Rs.15,000/-. Adding the general damages, in terms of the second schedule, and the medical expenditure, the total compensation in the case comes to $(4,06,000/- + 2,000/- + 2,500/- + 15,000/-)$ Rs.4,25,500/-, rounded off to Rs.4,26,000/-.

12. An award of Rs.4,26,000/- is granted in favour of the first appellant. It shall carry interest @ nine per cent (9%) per annum from the date of filing of the petition till realization.

13. The third respondent is directed to satisfy the award by requisite deposit with the tribunal within thirty days from today. Upon such deposit being made, the amount shall be released to the first appellant in the form of interest bearing fixed deposit receipt to be taken out from a nationalized bank in her name for a period of five years with liberty to draw periodic interest.

14. The appeal along with accompanying applications stands disposed of in above terms.

15. *Dasti.*

R.K.GAUBA, J.

AUGUST 18, 2017

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