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

Decided on: 07th September, 2017

\+ MAC APPEAL 85/2010 and CM Nos.2666-2668/2010

MANJEET SINGH MALHOTRA & ANR. ..... Appellants
Through: None

versus

NATIONAL INSURANCE CO. LTD. & ORS. ..... Respondents
Through: Ms. Nanita Sharma, Adv. for R-1

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

JUDGMENT (ORAL)

1. Ranjeet Kaur, aged about 40 years, suffered injuries in a motor vehicular accident that occurred on 08.07.2005 at Mehrauli Bus Terminal, New Delhi, involving negligent driving of a bus bearing registration no.DL-1PA-6282, which was admittedly insured against third party risk with the first respondent (insurer) for the period in question and died in the consequence. The appellants, they being husband and son respectively of the deceased (collectively, the claimants), instituted accident claim case (petition no.381/2006) on 07.09.2006 seeking compensation impleading besides the insurer, the driver and registered owner of the bus as party respondents, last two being second and third respondents.

2. The Motor Accident Claims Tribunal (Tribunal), by judgment dated 08.07.2009, upheld the claim for compensation holding the bus

driver to be responsible. The said finding has attained finality as it was not challenged by any of the affected parties. The tribunal computed the compensation in the sum of Rs.4,06,204/-, it inclusive of Rs.3,91,204/- towards loss of dependency and Rs.5,000/- each on account of loss of estate, loss of consortium and funeral expenses.

3. Feeling aggrieved with the amount of compensation, the present appeal was filed, the prime contention being that the award is inadequate under all relevant heads.

4. The claimants had pleaded that the deceased was employed with M/s. Asian Townsville Farms Ltd., 12/78, Vikram Vihar, Lajpat Nagar-IV, New Delhi, at a gross salary of Rs.8,000/- in the capacity of Office Executive. They led evidence to prove this fact, not only through the testimony of the claimant Manjeet Singh Malhotra (PW-3), but also by examining two witnesses from the said entity, they being Surjit Singh (PW-2) and Umesh Prasad (PW-4). The tribunal, however, was not satisfied with the said evidence. It found it to be not inspiring confidence and so on the basis of educational qualifications, *inter alia*, proved by certificate of completion of the course in Office Management and Business Communication (Ex.PW1/11), Computer Education Certificate (Ex. PW1/12) and course in DTP (Ex. PW1/14), it assessed the income notionally at Rs.3492.90. This being the wages payable to a matriculate during the relevant period.

5. On appraisal of the evidence led on record with the assistance of the counsel representing the first respondent (insurer), this court finds that the view taken by the tribunal in rejecting the evidence of PW-2 and PW-4 cannot be accepted. It does appear that the deceased had

been appointed with effect from 01.07.2005 only and had worked with the said entity for around a week. But then, the close proximity of the commencement of employment and the death itself cannot lead to the evidence to be junked. The witness had proved the attendance record. It was a record kept in regular course of business and, therefore, could not have been trashed because the witness who appeared on behalf of the employer was unable to affirm or identify each signatory. The evidence about the employment and the wages earned at Rs.8,000/- p.m., thus, are found to be deserving acceptance. The loss of dependency will have to be calculated accordingly.

6. The tribunal committed another error in computation by adopting the multiplier of 14. Since the deceased was around 40 years, the proper multiplier was 15. Thus calculation of the loss of dependency is worked out as (Rs.8,000/- x 2 / 3 x 12 x 15) Rs.9,60,000/-.

7. It is noted that the award under the non-pecuniary heads of damages are also highly deficient. Following the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors.*, *(2013) 9 SCC 54* and *Shashikala V. Gangalakshmamma (2015) 9 SCC 150*, awards of Rs.1,00,000/- each towards loss of love and affection, loss of consortium and Rs.25,000/- each towards loss of estate and funeral expenses are added.

8. Thus, total compensation in the case is computed as (Rs.9,60,000/- + Rs.1,00,000/- + Rs.1,00,000/- Rs.25,000/- + Rs.25,000/-] Rs.12,10,000/- (Rupees Twelve Lakh and ten thousand only). The award is modified accordingly. Needless to add, it shall carry interest as levied by the tribunal.

9. The first respondent is directed to satisfy the enhanced award by requisite deposit with the tribunal within 30 days making it available to be released.

10. The appeal and the pending applications are disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 07, 2017
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