$~R-125 & R-126 *(common order)*

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

Decided on: 21st August, 2017

\+ MAC.APP. 534/2009

RENU SINHA & ANR. ..... Appellants

Through: Mr. S.N. Parashar, Advocate with Ms. Pankaj Kumari, Advocate

versus

OM PRAKASH & ANR. ..... Respondents

Through: Mr. Sarfaraz Khan, Adv. with Mr. MIrza Amir Beg, Adv. for R-2/DTC.

Ms. Harsh Lata, Advocate for Ms. Shantha Devi Raman, Adv. for R-3.

\+ MAC.APP. 540/2009

NATIONAL INSURANCE CO. LTD. ..... Appellant

Through: Ms. Harsh Lata, Advocate for Ms. Shantha Devi Raman, Adv.

versus

SMT. RENU SINHA & ORS. ..... Respondents

Through: Mr. S.N. Parashar, Advocate with Ms. Pankaj Kumari, Advocate for R-1 to R-6.

Mr. Sarfaraz Khan, Adv. with Mr. MIrza Amir Beg, Adv. for R-8/DTC.

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

JUDGMENT (ORAL)

1. Anil Kumar Sinha, an employee of Delhi Transport Corporation (DTC), then aged 51 years, was on official duty in the workshop of DTC at Maya Puri Delhi at about 2:20 p.m. on 21.12.2004 when he suffered injuries on being hit by bus bearing registration No.DL-1PB-1899 (the bus) of DTC, driven by its employee (the seventh respondent) (Om Parkash), and died in the consequence. An accident claim case (Petition No.12/2009) was instituted on 28.01.2005 by first to sixth respondents (collectively, the claimants) impleading the said driver, DTC and National Insurance Company Limited as party respondents, the last admittedly being the insurer against third party risk in respect of the bus for the period in question.

2. The claim case was contested. After inquiry, by its judgment dated 07.08.2009, the Motor Accident Claims Tribunal (the tribunal) awarded compensation in the total sum of Rs.8,00,900/- directing the insurer to pay with interest @ seven and a half per cent (7.5%) per annum. In making the said calculation, the loss of dependency was worked out on the basis of average income of Rs.9858/- on which some improvements were made taking into account the possible increased income that the deceased would have earned had he continued to live, the multiplier of ten (10) having been applied and deduction having been made to the extent of one-fifth on account of personal and living expenses.

3. The tribunal also added Rs.50,000/- towards loss of love and affection and Rs.10,000/- towards loss of consortium and Rs.5,000/- each towards funeral expenses and loss to estate.

4. The insurance company, on which the liability was fastened by its appeal (MAC APP.540/2009), has questioned the judgment on the ground that the accident had not occurred at a public place and that the seventh respondent not being the authorized driver, he being a tyreman, the liability could not have been fastened against the registered owner of the vehicle, *i.e.*, DTC and, therefore, the insurance company could not be called upon to indemnify. The insurance company also questions the deduction on account of personal and living expenses only to the extent of one-fifth submitting that as per ruling in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121,* the deduction should have been to the extent of one-fourth only.

5. *Per contra*, the claimants seek enhancement by their appeal (MAC APP.534/2009) on the ground the multiplier of 11 would apply given the age of 51 years and that the non-pecuniary damages and rate of interest levied are inadequate. It is also submitted that the tribunal has not properly calculated the element of future prospects of increase.

6. The accident occurred within the premises of Depot of DTC at Maya Puri Delhi. By no stretch of imagination it can be called a private place so as to relieve the respondents in the claim petition of any liability. The other contention of the insurance company is also not correct. The seventh respondent who was at the wheel of the

vehicle may not have been authorized driver. But then, the fact remains that he was also an employee of the DTC, the registered owner of the vehicle. The finding on the issue of liability of DTC, as returned by the tribunal, therefore, cannot be questioned. The net result is that the insurance company is liable to indemnify.

7. Instead of the method adopted by the tribunal in calculating the future prospects of increase, such element, as per the decision in *United India Insurance Co. Ltd.* vs. *Kamla & Ors.*, MAC.APP. 548/2013, dated 28th March, 2016, to the extent of fifteen per cent (15%) of prospective increase would be more appropriate. Further, the multiplier of 11 would apply, the choice of 10 as adopted by the tribunal being erroneous. The insurance company is correct in submitting that the deduction on account of personal and living expenses had to be to the extent of one-fourth, in as much as the dependency only of five could be accepted, father being not amongst them. The loss of dependency is, thus, re-computed as (9858 x 115/100 x 3/4 x 12 x 11) Rs.11,22,333/- rounded off to Rs.11,23,000/-

8. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (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 (11,23,000/- + 2,50,000) Rs.13,73,000/-.

9. As noted by the tribunal, the claimants have already received Rs.2 lacs under the accident insurance taken out by the employer and Rs.50,000/- as interim compensation from DTC. This would mean the net amount payable to them would be (13,73,000/- - 2,50,000/-) Rs.11,23,000/-.

10. The award is modified accordingly.

11. 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 nine per cent (9%) per annum from the date of filing of the petition till realization.

12. By order dated 06.11.2009 passed in MAC APP.540/2009, the insurance company had been directed to deposit the entire awarded amount with interest with UCO Bank as a pre-condition to the stay of the execution. By order dated 21.01.2010, an amount of Rs.91,198/- was released to the first claimant, the balance having been put in fixed deposit receives for various periods in favour of the other claimants.

13. The registry shall calculate the amount payable to the claimants in terms of the modified award and release the balance to the claimants accordingly. In case excess is lying in deposit, the same shall be refunded to the insurance company. Conversely, if any further amount is to be paid under the modified ward, the insurance company will deposit the same within thirty days (30) with the tribunal, making it available to be released to the claimants.

14. Both the appeals stand disposed of in above terms.

15. The statutory amount shall be refunded to the insurance company.

16. *Dasti.*

R.K.GAUBA, J.

AUGUST 21, 2017
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