

\$~R-377 & 378

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

Decided on: 27th October, 2017

+ **MAC APPEAL 704/2011**

NEW INDIA ASSURANCE CO. LTD. Appellant
Through: Mr. Priyadarshi Acharya for Mr
Sameer Nandwani, Advocate

versus

SHEELA DEVI & ORS. Respondents
Through: None

+ **MAC APPEAL 1209/2012**

SHEELA DEVI & ORS. Appellants
Through: None

versus

MAHENDER SINGH & ORS. Respondents
Through: Mr. Priyadarshi Acharya for Mr
Sameer Nandwani, Advocate
for R-3

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

JUDGMENT (ORAL)

1. Rajender Kumar Moura, aged 42 years, working as Post Master in the Department of Posts of the Government of India, suffered injuries in a motor vehicular accident that had occurred on 01.09.2007,

while travelling as a passenger in three wheeler scooter bearing registration no.DL-1RG-4557 (TSR), it having collided against truck bearing registration no.HR-38K-6157 (the truck) and died in the consequence. His wife and five members of the family dependent on him, they being appellants in MACA 1209/2012 (collectively, the claimants) instituted accident claim case (MACT suit no.24/2009) on 13.09.2007 which was decided by judgment dated 09.05.2011 returning a finding that the accident had occurred due to the negligent driving of the truck. The truck was admittedly insured against third party risk for the period in question with New India Assurance Company Ltd. / appellant in MACA 704/2011 (insurer), it having been held liable to pay the compensation which was determined in the total sum of Rs.15,08,468/-, it inclusive of an amount of Rs.12,73,468/- on account of the loss of dependency.

2. The insurer of the truck, by its appeal, submits that since there was evidence to show that the TSR driver was also at fault, the liability should have been apportioned and fastened upon him too. The claimants, on the other hand, by their appeal submit that the award of compensation is inadequate.

3. Both appeals were admitted and put in the list of 'Regulars', to come up on their own turn. They were taken up for exploring the possibility of settlement through *Lok Adalat* on some dates but with no fruitful result. When they are called out for hearing, there is no appearance on behalf of the claimants. The matters have been considered with the assistance of the counsel for the insurer and upon perusal of the tribunal's record.

4. The plea of the insurer about apportionment of liability must be rejected for the simple reason that even if the TSR driver were to be also held negligent, it would be a case of composite liability and, thus, the choice of the claimants cannot be defeated, particularly when the insurer had made no effort to implead the TSR driver or owner or insurer at the time of inquiry before the tribunal.

5. On the question of computation of compensation, the grievance of the claimants appears to be correct. The tribunal has gone by the salary of Rs.7,775/- earned by the deceased as on 01.08.2007. This is against the record. The witness from the department had proved (Ex. PW2/3) that the salary of the deceased would have reached the level of Rs.11,459/- with effect from 01.09.2007 upon acceptance of the recommendation of the Sixth Central Pay Commission which were implemented later upon they having been accepted by the Government of India. In these circumstances, the loss of dependency will have to be made assuming the income of the deceased at Rs.11,459/- though after deducting one-fourth on account of personal and living expenses, with addition of the element of 30% towards future prospects of increase and on the multiplier of 14.

6. Thus calculated, the loss of dependency comes to [Rs.11,459/- x $\frac{130}{100} \times \frac{3}{4} \times 12 \times 14$] Rs.18,76,984.20, rounded off to Rs.18,77,000/- (Rupees Eighteen Lakh and seventy seven thousand only).

7. Adding the other components of compensation awarded by the tribunal, the total compensation comes to [Rs.18,77,000/- + Rs.1,50,000/- + Rs.30,000/- + Rs.15,000/- + Rs.40,000/-]

Rs.21,12,000/- (Rupees Twenty one Lakh and twelve thousand only). The award is modified accordingly. It shall carry interest as levied by the tribunal.

8. By order dated 02.08.2011 on MACA 704/2011, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General, which was directed to be kept in fixed deposit receipt. By order dated 28.05.2012, fifty percent (50%) of the said amount was permitted to be released to the claimants. Since the award has been modified, the entire amount lying in balance with accrued interest shall also now be released to the claimants. It is directed that the entire enhanced portion of the award alongwith corresponding interest to be deposited by insurer within 30 days with the tribunal shall fall to the share of Sheela Devi (widow) only, it to be released to her in the form of fixed deposit receipt taken out from a Nationalized bank in her name for a period of seven years with right to draw periodic interest.

9. The statutory deposit made by the insurance company shall be refunded after proof is furnished of the modified award having been satisfied.

10. Both appeals are disposed of in above terms.

R.K.GAUBA, J.

OCTOBER 27, 2017

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