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

Decided on: 20th July, 2017

+ **MAC.APP. 861/2014**

UNITED INDIA INSURANCE CO. LTD. Appellant

Through: Mr. Pankaj Gupta, Adv. with
Mr. Brijesh Bagga, Adv. for
Ms. Suman Bagga, Advocate

versus

KAMLESH SHARMA & ORS. Respondents

Through: Mr. Rajeev Saxena, Advocate
with Ms. Minal Sehgal,
Advocate for R-1 to R-4.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Vinit Kumar, aged 42 years old, working for gain as Director in M/s. SPS Advertising and Management Services Pvt. Ltd., died as a result of the injuries suffered in a motor vehicular accident that occurred on 25.05.2011. The appellant being the insurer of the motor vehicle which was involved, its driver having been found to be negligent, on the claim petition of the first to fourth respondent (the claimants) (MACP No.320/2011), the Motor Accident Claims Tribunal (the tribunal), by judgment dated 10.07.2014, awarded compensation in the total sum of Rs.46,83,413/- with interest @ 7.5% per annum from the date of filing of the petition till realization, fastening the liability on the insurer to pay.

2. By the appeal at hand, the insurance company raises two questions. The first contention is that after the death, the first respondent (widow) has taken over as the Director in the same company in place of her husband and, therefore, there is no loss. This argument must be rejected outright. The first respondent is not earning her livelihood as the Director simply because she is the widow of the deceased Director. She is rendering services to the company and what she earns is fruits of her labour which cannot be equated with the loss of dependency.

3. The other contention of the insurer is that the income of the deceased was wrongly computed as Rs.3,50,000/-. This is based on the audited accounts of the company (Ex.PW3/A) for the year ending 31.03.2011. This contention is correct in that the audited accounts say that remuneration paid to the Directors was in the sum of Rs.3,50,000/-. The Articles of Association of the company, copy whereof is placed on record (Ex.PW-1/4), indicated that besides the deceased, there was one more Director (Anand Kumar), the other Director having appeared as PW-3. But then the claimants had also relied upon the income tax return (ITR) which was submitted by the deceased for the assessment year (AY) 2008-09, copy whereof was placed on record as Annexure-B (page 297 of the tribunal's record) which indicates the income declared for the corresponding year was Rs.2,02,456/-. It has to be remembered that the widow in the course of her deposition as PW-1 has explained that besides being the Director of the aforementioned company, the deceased was also

running an advertising firm earning additionally from the said business. Though no formal proof of actual earnings from such additional business at the time of death could be mustered, the ITR for the AY 2008-09 supports the said claim. The learned counsel for the claimants submitted that he would be agreeable if the calculation of loss of dependency is made on the basis of income declared by the ITR for the AY 2008-09. This submission must be accepted.

4. Given the fact that the death had occurred at the age of 42 years, having regard to the cogent and irrefutable evidence showing regular earnings, the element of future prospects of increase must be factored in, which in the present case would be to the extent of 30%, as rightly allowed by the tribunal.

5. Given the fact that there were four claimants, one-fourth is to be deducted towards personal and living expenses and the multiplier of 14 has to be applied. It is noted that in the ITR referred to above, the tax liability was worked out as Rs.12,604/- which has to be deducted. Thus, the loss of dependency is re-computed on the net income as $(2,03,456/- - 12,604/- \times 130/100 \times 3/4 \times 14)$ Rs.26,05,129/- rounded off to Rs.26,06,000/-.

6. It is noted that the tribunal has awarded Rs.1 lac each towards loss of love and affection and loss of consortium and Rs.25,000/- each towards funeral expenses, besides Rs.10,000/- towards loss to estate.

7. Following the view taken in MAC.APP.No.160/2015 *MAC.APP.160/2015 Shriram General Insurance Co Ltd v. Usha*

decided by this court on 05.05.2016, these awards need upward revision. Therefore, the non-pecuniary damages are modified. There shall be an award of Rs.1,50,000/- each towards loss of love & affection and loss of consortium and Rs.50,000/- each towards loss to estate and funeral expense. Hence, the total compensation payable in the case comes to (26,06,000/- + 4,00,000/-) Rs.30,06,000/-.

8. The award is modified accordingly.

9. 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.

10. By order dated 19.09.2014 the insurance company had been directed to deposit 60% of the awarded amount with corresponding interest with the Registrar General of this court which was allowed to be released to the claimants.

11. It is noted that the tribunal had apportioned the award by specifying the amount to be paid to the respective claimants. In the facts and circumstances of the case, it is directed that the amount already released in favour of second to fourth respondents shall be treated as their share, the entire balance now to be paid to be the share of the first respondent only.

12. The insurance company shall deposit the balance of its liability in terms of the modified award with the tribunal within thirty days whereupon it shall be released to the claimant (first respondent).

13. The appeal is allowed in above terms.

14. The statutory amount, if deposited, shall be refunded to the appellant insurance company.

R.K.GAUBA, J.

JULY 20, 2017

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