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

Decided on: 24th August, 2017

\+ MAC APPEAL No. 577/2009

SARLA & ORS. ..... Appellants

Through: None.

versus

PRADEEP SINGH RAWAT & ORS. ..... Respondents

Through: Mr. D.K. Sharma, Adv. for R-3.

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

JUDGMENT (ORAL)

1. Om Prakash, aged 39 years, suffered injuries in a motor vehicular accident that occurred on the night of 09 &10th February, 2005, statedly due to negligent driving of Toyota Qualis bearing No. HR 55 BT 4573, admittedly insured against third party risk for the relevant period with the third respondent (insurer) and died in the consequence. His wife and other members of the family dependent upon him (they being appellants in MAC Appeal No. 577/2009), instituted accident claim case (MACT No. 575/2008) on 04.06.2005 seeking compensation, impleading the driver and owner (first and second respondents in the appeal) and the said insurer as parties.

2. The tribunal, by judgment dated 19.08.2009, upheld the case for compensation on principle of fault liability and awarded compensation in the sum of Rs.11,34,000/- with interest @ 7.5% per annum, the said

sum including Rs.9,54,000/- towards loss of dependency, Rs. 1,50,000/- towards loss of love & affection and Rs. 10,000/- each towards funeral expenses and loss to estate.

3. The appeal has been filed by the claimants, *inter alia,* submitting that the compensation granted was inadequate. The insurance company, upon notice, appeared and filed cross-objections (CM No. 6878/2010 under Order 41 Rule 22 of the Code of Civil Procedure, 1908 (CPC), its contention being that the tribunal has over-assessed the income of the deceased on the basis of income-tax return (ITR) for the year 2001-2002).

4. The appeal was directed to be shown in the list of 'regulars' as per order dated 9th April, 2010. When it is taken up for hearing, there is no appearance on behalf of the claimants.

5. The learned counsel for the insurance company has been heard and the record has been perused.

6. The claimants had pleaded that the deceased was working as Manager with a private entity M/s Swadeshi Transport Organization at a salary of Rs. 12,000/- and evidence to this effect was led by salary certificate (Ex.PW-2/15) purportedly issued by the proprietor of the said private concern having been submitted in the course of her testimony by the claimants Sarla Devi (PW-2). This apparently was not the proper mode of proving the employment. No official of the said entity was summoned to bring on record the corroborative proof. The claimants had also submitted, as part of the evidence, copy of the ITR for the assessment year 2001-2002 (Ex.PW-3/A). There was no explanation worth the name as to why the ITRs for the subsequent

period was not shared in the evidence with the tribunal. In the facts and circumstances, the tribunal rightly rejected the certificate and proceeded to make the calculation of loss of dependency on the basis of declared income. The calculations in that regard do not call for any interference.

7. It is, however, noted that the non-pecuniary heads of damages were not properly taken care of. Having regard to the dispensation in similarly placed cases as per rulings 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 would have been appropriate. Thus, such awards are made in view of the awards granted by the tribunal in the impugned judgment. This would mean that there has to be an increase in the total compensation by (2,50,000 – 1,80,000) Rs.70,000/- (Rupees Seventy Thousand Only).

8. Ordered 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. The award is modified accordingly.

11. This disposes of the appeal and the cross-objections.

12. The insurance company shall deposit the enhanced portion of the award with the amount payable on account of increase in the rate of interest with the tribunal within thirty days hereof. Upon such

deposit being made, the entire said additional amount shall be released in favour of the first claimant Sarla Devi (widow) in the form of interest bearing fixed deposit receipt to be taken out from a nationalized bank in her name for a period of seven years with right to draw monthly interest.

R.K.GAUBA, J.

AUGUST 24, 2017
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