$~R-58 & R-59

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

Decided on: 04th August, 2017

\+ MAC.APP. 85/2009

PAMILA BAKSHI @ SANGEETA BAKSHI
& ORS. ..... Appellants
Through: Mr. O.P. Mannie, Advocate

versus

DHANI RAM & ORS. ..... Respondent
Through: Mr. Amit Gaur and Mr. Pradeep Gaur, Advocates for R-3

\+ MAC.APP. 86/2009

PAMILA BAKSHI @ SANGEETA BAKSHI ..... Appellant
Through: Mr. O.P. Mannie, Advocate

versus

DHANI RAM & ORS. ..... Respondents
Through: Mr. Amit Gaur and Mr. Pradeep Gaur, Advocates for R-3

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

JUDGMENT (ORAL)

1. On 15.06.2005, Satish Kumar Bakshi, his wife Pamila Bakshi and other members of the family were moving in a Maruti van bearing registration no.CH-03E-2431 on public road from Jammu. During the said journey, at about 1.30 p.m. in the area of Vijay pur near Thandi Kui, Jammu, the van came to be involved in a collision with truck bearing registration no.JK-02G-7120, admittedly insured against third

party risk with National Insurance Company Ltd. (third respondent). As a result, all the occupants of the car including Satish Kumar Bakshi and Ms. Pamila Bakshi suffered injuries, the former dying in the consequence.

2. Several accident claim cases, including on account of injuries suffered by Pamila Bakshi (suit no.111/07) and on account of death of Satish Kumar Bakshi (suit no.112/07), were instituted on 13.09.2005. All the claim cases were clubbed for inquiry on the conclusion of which the tribunal rendered its decision by a common judgment dated 04.03.2008 whereby the case for compensation in each case on the principle of fault liability was upheld, the insurer having been found liable to indemnify and, thus, pay the compensation.

3. On the claim petition for injuries of Pamila Bakshi, she was awarded compensation in the total sum of Rs.7,82,000/- while in the claim case arising out of the death of Satish Kumar Bakshi, compensation in the total sum of Rs.5,25,000/- was awarded in favour of the claimants. The insurer was directed in each case to pay the said amounts with interest at the rate of 7.5% p.a. from the dates of filing of the petitions till payments.

4. The awards in the above mentioned two cases are assailed by the appeals at hand by the respective claimants seeking enhancement.

5. In the claim case arising out of the death of Satish Kumar Bakshi, the award was calculated thus :-

Loss of Dependency	Rs.5,05,000/-
Love, affection and consortium	Rs.50,000/-

Funeral expenses	Rs.10,000/-
Transportation charges	Rs.10,000/-
Total	Rs.5,75,000/-

6. The grievance of the claimants in appeal concern only the non-pecuniary heads of damages and rate of interest levied.

7. Indeed, the award under the non-pecuniary heads of damages is 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 Lakh each towards loss of love and affection and loss of consortium and Rs.25,000/- each towards funeral expenses and loss to estate are granted in addition to Rs.10,000/- towards transportation charges. This means there would be a net increase in the award in the sum of Rs.1,90,000/-.

8. The award in the case for claim for compensation on account of Satish Kumar Bakshi is increased by Rs.1,90,000/-. It is directed that the entire enhanced portion with corresponding interest shall be payable to the first claimant (Pamila Bakshi), it to be released in the form of fixed deposit receipt in her name taken out from a nationalized bank for a period of five years with right to draw monthly interest.

9. The compensation in the case of injuries of Pamila Bakshi was calculated thus :

Medical treatment	Rs.4,50,000/-
Conveyance charges	Rs.10,000/-
Special Diet	Rs.10,000/-

Future treatment	Rs.25,000/-
Loss of earning capacity & loss of amenities of life	Rs.2,15,000/-
Loss of income	Rs.20,000/-
Attendant charges	Rs.4,500/-
Transportation charges	Rs.12,000/-
Total amount of compensation	Rs.7,81,500/-
Rounded off	Rs.7,82,000/-

10. The grievance of the claimant in appeal is that the award under the non-pecuniary heads of loss of amenities should not have been clubbed with loss of earning capacity due to disability which has been assessed to the extent of 40%. It is pointed out that the claimant was 43 years old at the relevant point of time and that the future loss of income due to disability assessed at 40% in relation to whole body was calculated with the multiplier of 11 instead of 14, per the ruling in *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121*. It is also submitted that the award of Rs.35,000/- towards pain and agony and the rate of interest at 7.5% p.a. are inadequate.

11. Indeed, there is an error in calculation of loss of future income due to disability as the calculation required the multiplier of 14 to be adopted. The non-pecuniary heads of damages on account of pain and agony and loss of amenities have not been properly addressed.

12. The loss of future income due to disability is, thus, re-computed as (Rs.19,200/- x 14) Rs.2,68,800/-, rounded off to Rs.2,69,000/-. Since the tribunal had awarded Rs.2,15,000/-, there would be an

increase in the award under this head by (Rs.2,69,000/- (-) 2,15,000/-) Rs.54,000/-. Instead of Rs.35,000/- towards pain and agony and with no separate award under the loss of amenities of life, the non-pecuniary damages in the sum of Rs.50,000/- under each of the said heads are added. This would result in further increase in the award by Rs.65,000/-.

13. Thus, the net increase in the award on account of injuries of Pamila Bakshi would be (Rs.54,000/- + Rs.65,000/-) Rs.1,19,000/-. Ordered accordingly. The said enhanced portion of the award with interest shall be released to Pamila Bakshi with interest in the form of fixed deposit receipt in her name taken out from a nationalized bank for a period of five years with right to draw monthly interest.

14. Following the consistent view taken by this Court, the rate of interest in each case is increased to 9% per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.].

15. The insurance company is directed to satisfy the awards by requisite deposits with the tribunal within 30 days making it available to be released.

16. The appeals stand disposed of in above terms.

R.K.GAUBA, J.

AUGUST 04, 2017
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