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

Decided on: 21st August, 2017

+ MAC.APP. 953/2016

PRAMILA DEVI & ANR Appellants
Through: Mr. Vinod Sharma, Advocate

versus

NATIONAL INSURANCE CO LTD & ORS Respondents
Through: Ms. Rakhi Dubey, Adv. for R-1

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

JUDGMENT (ORAL)

1. Ashish, a bachelor, aged 25 years, died in a motor vehicular accident that occurred on the intervening night of 29 /30.08.2012 due to negligent driving of a motor vehicle bearing registration no.UP-14CT-4464 admittedly insured against third party risk with the first respondent (insurer). Accident claim case (MAC petition no.175/12) was instituted by the appellants joining the two siblings of the deceased as co-petitioners seeking compensation. The said petition was allowed by the tribunal, by judgment dated 31.05.2016, awarding compensation in the sum of Rs.7,00,924/- with interest at the rate of 12% p.a.. The said amount includes Rs.5,25,924/- calculated as loss of dependency, Rs.1,00,000/- towards loss of love and affection, Rs.50,000/- towards loss to estate and Rs.25,000/- towards funeral and transport expenses.

2. The appellants press the appeal seeking enhancement on the ground that the element of future prospects should have been added while calculating the loss of dependency. It is also their contention that the multiplier of 18 should have been chosen on the basis of the age of the deceased and further that the non-pecuniary damages are inadequate.

3. *Per contra*, the counsel for the insurance company submitted that while the award is appropriate, the rate of interest levied is excessive.

4. The plea about the multiplier cannot be accepted since the choice of the multiplier as made by the tribunal is in accord with the rulings of the Supreme Court in *General Manager, Kerala State Road Transport Corporation vs. Susamma Thomas & Ors.*, (1994) 2 SCC 176; *U.P. State Road Transport Corporation and Ors. vs. Trilok Chandra and Ors.*, (1996) 4 SCC 362 and of this court in *National Insurance Co. Ltd. Vs. Mohammed Siddique & Ors.*, MACA 431/2016, decided on 18.07.2017. It is the age of the deceased and that of the claimants, whichever is higher, which is to be the basis of the choice of the multiplier.

5. The claimants had shown by salary slips of the deceased for the period July and August 2012 (page 263-265 of the tribunal's record) that the deceased was in regular employment with M/s. Tech Mahindra as Service Engineer. Having regard to the said facts and the emoluments earned, it is clear that his income would have seen progressive rise in future. With such irrefutable evidence having been brought in, the element of future prospects should have been factored

in. [see judgment dated 28.03.2016 in MAC.APP. 548/2013 *United India Insurance Co. Ltd. v. Kamla & Ors.*].

6. The loss of dependency, after deducting 50% towards personal and living expenses on the multiplier of 14, is thus calculated as (Rs.6,261/- x 130/100/2 x 12 x 14) Rs.6,83,701.20, rounded off to Rs.6,84,000/-.

7. While the award of Rs.50,000/- towards loss to estate as granted by the tribunal is correct, having regard to the date of the accident and death, the award under the other non-pecuniary heads of damages is deficient. Following the ruling in *Shriram General Insurance Co Ltd v. Usha*, MAC.APP.No.160/2015, decided on 05.05.2016, award of Rs.1,50,000/- is granted towards loss of love and affection and Rs.50,000/- towards funeral expenses. The total compensation thus comes to (Rs.6,84,000/- + Rs.1,50,000/- + Rs.50,000/- + Rs.50,000/-) Rs.9,34,000/-. The award is enhanced accordingly.

8. The submission of the insurer about the rate of interest is correct. There are no special reasons recorded by the tribunal for granting such higher rate of interest. Following the consistent view taken by this court, the rate of interest is reduced 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.*]

9. The insurance company will deposit the requisite amount in terms of the modified award with the tribunal within 30 days, making it available to be released to the claimants.

10. The appeal is disposed of in above terms.
11. *Dasti.*

R.K.GAUBA, J.

AUGUST 21, 2017

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