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

Decided on: 11th July, 2017

\+ MAC APPEAL 569/2017 & CM Nos. 23836/2017

SUJATA SINGH & ORS. ..... Appellants
Through: Mr. Lokesh Kumar Mishra & Mr. B.N. Chaudhary, Advs.

versus

GAUTAM YADAV & ORS. ..... Respondents
Through: Mr. J.P. N. Shahi, Adv. for R-3.

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

JUDGMENT (ORAL)

1. The appellants are claimants on whose petition (MACT No. 154/2017), instituted on 24.01.2017, the claims tribunal by its judgment dated 10.04.2017 awarded compensation in the total sum of Rs. 35,81,200/- with interest @ 9% per annum calling upon the third respondent (insurer) to pay on account of death of Raj Mangal Singh in a motor vehicular accident that occurred on 11.10.2016 involving negligent driving of car bearing registration no. DL 1YD 8978, statedly insured against third party risk for the period in question with the said insurer.

2. The short issue raised in the appeal concerns the non-inclusion of element of future prospects of increase in income in working out the loss of dependency.

3. Issue notice. Mr. J.P. N. Shahi, Advocate accepts notice on behalf of third respondent.

4. The issue raised is narrow and the counsel on both sides are ready for arguments. With their consent, the appeal has been taken up for final hearing.

5. The tribunal has taken note of the fact that deceased was working as Assistant Telecom Technician with Bharat Sanchar Nigam Ltd. (BSNL). His last emoluments were taken, on the basis of evidence adduced, as Rs.38,023/-. As per the evidence, the deceased was 53 years old. Given the nature of employment of BSNL, clearly the service conditions indicating regular incremental rise, as also indicated by formal document (Ex.PW-1/X), concrete and irrefutable evidence supporting the claim for future prospects to be factored in is available, benefit whereof should have been granted in terms of the judgment of this Court in *United India Insurance Co. Ltd. vs. Kamla & Ors. MAC Appeal No. 548/2013* decided on 28.03.2016, to the extent of 15%.

6. The award, thus, needs to be suitably increased. After deducting 1/3rd towards personal and living expenses, applying the multiplier of 11, as correctly adopted by the tribunal, the dependency loss with addition of future prospects is computed as (38023 x 2 ÷ 3 x 115 ÷ 100 x 12 x 11) Rs. 38,47,927.59, rounded off to Rs.38,48,000/-.

7. It is also noted that the accident had occurred on 11.10.2016. In this view the non-pecuniary damages have also been awarded inadequately. Following the view taken in MAC.APP.No.160/2015 *Shriram General Insurance Co Ltd v. Usha* decided by this court on 05.05.2016, non-pecuniary damages in the sum of ₹1,50,000/- each towards loss of love & affection and loss of consortium and ₹50,000/- each towards loss of estate and funeral expense are added.

8. Hence, the total compensation payable in the case comes to (38,48,000+ 1,50,000+ 1,50,000 + 50,000 + 50,000) ₹42,48,000/-. The award is modified accordingly. It shall carry interest at the rate levied by the tribunal.

9. The tribunal had apportioned Rs. 7 lakh each to the second and third appellants (claimants), disbursing the rest in favour of the widow (first appellant). The amount disbursed in favour of the second and third respondents shall remain unchanged. The entire balance shall go to the first appellant to be invested in accordance with the directions of the tribunal.

10. Insurance company is directed to deposit the awarded amount with the tribunal within 30 days.

11. The appeal is disposed of in above terms.

R.K.GAUBA, J.

JULY 11, 2017
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