

\$~R-84 & 85

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

Decided on: 03rd August, 2017

+ **MAC APPEAL 372/2009**

**BAJAJ ALLIANZ GENERAL INSURANCE
CO. LTD.**

..... Appellant

Through: Ms. Manu Kushwaha,
Advocate

versus

SAROJ & ORS.

..... Respondents

Through: Mr. Anshuman Bal, Adv. for
R-1 to 8

+ **MAC APPEAL 1037/2016**

SAROJ & ORS.

..... Appellants

Through: Mr. Anshuman Bal, Advocate

versus

**BAJAJ ALLIANZ GENERAL INSURANCE
CO. LTD. & ANR.**

..... Respondents

Through: Ms. Manu Kushwaha, Adv. for
R-1

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Raghubir Singh (born on 12.10.1958), employed as Work Assistant with Mahanagar Telephone Nigam Limited (MTNL),

suffered death due to injuries sustained in a motor vehicular accident that occurred on 12.01.2008 about 1.30 p.m. due to negligent driving of a motor vehicle described as Tata 709 bearing registration no.DL-1LG-7673, which was admittedly insured against third party risk with Bajaj Allianz General Insurance Co. Ltd. (appellant in MACA 372/2009). His wife and other members of the family, claiming to be dependents, they being first to eight respondents in MACA 372/2009 (collectively, the claimants), they also having since filed cross-appeal (MACA 1037/2016), instituted accident claim case (suit no.90/2008) on 12.02.2008 before the Motor Accident Claims Tribunal (Tribunal).

2. After inquiry, the Motor Accident Claims Tribunal (Tribunal), awarded compensation in the sum of Rs.26,04,148/- and directed the insurer to pay with interest at the rate of 7.5% p.a. The said award included Rs.25,000/- as composite compensation on account of funeral expenses and loss of love and affection and the rest for the loss of dependency.

3. The insurer has come up in appeal (MACA 372/2009) submitting that the loss of dependency was improperly calculated. The claimants, on the other hand, by their cross appeal (MACA 1037/2016) are aggrieved submitting that the compensation awarded is inadequate.

4. Having heard both sides and having gone through the record, this court finds some errors and deficiencies in the award granted by the Tribunal, the submission of the claimants about inadequacy being correct.

5. The deceased was less than 50 years old at the time of accident. Therefore, the multiplier of 13 was correctly adopted. Having regard to the fact that three of his children were already married and settled, the personal expenses to the extent of one-fourth was correctly deducted. However, the error occurred in assessing the salary. The tribunal took it at Rs.14,696/- p.m., it being the net salary against the salary proved by document (Ex. PW3/5). It, however, ignored that the salary stood increased on account of merger of the dearness allowance and as per last pay certificate (Ex. PW3/4), the total emoluments earned by him at the time of his death were in the sum of Rs.18,589/- which should have been the basis of calculation of loss of dependency. Since the deceased had not attained the age of 50 years, future prospects of increase to the extent of 30% had also to be added.

6. Having regard to the last income of Rs.18,589/-, the annual income would come to Rs.2,23,068/-. Taking into account of rates of income tax applicable at the relevant point of time, including the deductions which were allowed, there would be no element of income tax liability. Thus, calculated loss of dependency is worked out as $(Rs.18,589/- \times 130/100 \times 3 / 4 \times 12 \times 13)$ Rs.28,27,386.9, rounded off to Rs.28,28,000/-.

7. Indeed, the non-pecuniary damages are grossly inadequate. Following the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (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 loss of estate and funeral expenses are added. Thus, the total compensation is computed as

(Rs.28,28,000/- + Rs.1,00,000/- + Rs.1,00,000/- + Rs.25,000/- +Rs.25,000/-) Rs.30,78,000/-.

8. Following the consistent view taken by this Court, the rate of interest 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.*].

9. The award is modified accordingly.

10. The amount of compensation awarded by the tribunal was deposited and released in terms of order dated 28.10.2009. Since the award has been increased, the insurance company shall be liable to pay the balance with corresponding benefit of increase in the rate of interest. Such deposit shall be made with the Tribunal within 30 days making it available to be released. Having regard to the apportionment already made in favour of the other claimants, it is directed that the entire balance now to be paid shall be released to the widow (Saroj) in the form of fixed deposit receipts for a period of seven years with right to draw monthly interest.

11. The statutory deposit, if any, made by the insurance company shall be refunded.

12. Both the appeals are disposed of in above terms.

R.K.GAUBA, J.

AUGUST 03, 2017

yg