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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 26th October, 2017

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MAC APPEAL 1053/2016

THE NEW INDIA ASS. CO. LTD. Appellant

Through: Ms. Awantika Manohar, Adv.

Versus

SAROJ DEVI & ORS. Respondents

**Through: Mr. S.N. Parashar, Adv. for R1
to R3.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Amit Kumar, bachelor, aged 24 years, died in motor vehicular accident that occurred on 04.09.2014 due to negligent driving of bus bearing registration no. DL-1PC-6613, admittedly insured against the third party risk for the period in question with the appellant (insurer). His parents and sister they being first to third respondents (collectively, the claimants) instituted accident claim case (old no. 609 14 & MACT case no. 476864/16) on 11.11.2014 seeking compensation. The tribunal by judgment dated 25.10.2016 accepted the claim for compensation under section 166 Motor Vehicles Act,

1988, holding the bus driver Guru Charan Singh (respondent) responsible for the accident.

2. The tribunal awarded compensation in the total sum of Rs. 35,52,000/- and directed the insurer to pay the said amount, such amount inclusive of Rs. 1,00,000/- towards loss of love and affection and Rs. 25,000/- each towards loss of estate and funeral charges and the balance on account of loss of dependency.

3. The insurer questions the computation of compensation pointing out several errors including the addition of the element of future prospects and the invocation of the multiplier of 18. *Per contra*, the claimants argued that the tribunal fell into error by ignoring certain regular allowances from the earnings and that the non-pecuniary damages as awarded are inadequate.

4. Since the evidence led clearly proves that the deceased was a regular employee though of a private company, in the capacity of a field executive going by the terms of his engagement as reflected *inter alia* in the appointment letter (Ex-PW1/2) and salary slips (Ex-PW1/3 & 5), it is clear and vivid that the income would progressively rise. In the face of such evidence, the element of future prospects of increase cannot be grudged. [see judgment dated 28.03.2016 in MAC.APP. 548/2013 titled as, *United India Insurance Co. Ltd. v. Kamla & Ors.*]

5. The grievance of the claimants against exclusion of travelling allowance and washing allowance is correct. Such allowances, going by the fact that engagement in the private entity was regular and these perks would result in corresponding savings cannot be kept out. Thus,

the income of the deceased will have to be taken as Rs. 23,500/- per month for calculating the loss of dependency.

6. In MAC APP. 467/2016 titled *Reliance General Insurance Company Limited Vs. Gomti & Ors.* decided on 24.08.2017, this Court has held as under:-

“6. The question as to the choice of multiplier in cases of deaths of bachelors, had come up before this Court in MAC appeal No. 431/2016 National Insurance Co. Ltd. vs. Mohd. Siddique & Ors. decided on 18th July, 2017, where it was urged on behalf of the insurance company that the law laid down by the Supreme Court in cases of General Manager, Kerala State Road Transport Corporation vs. Susamma Thomas & Ors., (1994) 2 SCC 176 and U.P. State Road Transport Corporation and Ors. vs. Trilok Chandra and Ors., (1996) 4 SCC 362 continues to prevail as the binding precedent. This Court, after examining the issue in light of the decisions in aforementioned cases and in the cases of Reshma Kumari vs. Madan Mohan (2013) 9 SCC 65 and noting the dicta in Central Board of Dawoodi Bohra Community & Anr. v. State of Maharashtra & Anr., (2005) 2 SCC 67; Safiya Bee v. Mohd. Vajahath Hussain @ Fasi, (2011) 2 SCC 94 and Union of India & Ors. v. S.K. Kapoor, (2011) 4 SCC 589, held as under:-

“16. Since the decision in Trilok Chandra and Ors., (supra) by a bench of three Hon’ble Judges is prior in time in relation to the decisions in Reshma Kumari (supra) and Munna Lal Jain (supra), it is the statement of law on choice of multiplier in the former which is to be taken as the binding precedent. Thus, this court will follow the dictum in the said judgment and adopt the multiplier according to the age of the deceased or that of the claimants, whichever is higher”.

7. Since, it is a case of a bachelor's death, the prime claim being for and on behalf of mother, it is her age which should regulate the choice of multiplier. The learned counsel on both the sides agree that the age of the mother was correctly shown in proceedings as 54 years and, therefore, the multiplier of 11 would apply. The loss of dependency is thus recalculated as $(23500 \times 150 / 100 / 2 \times 12 \times 11)$ Rs. 23,26,500 rounded off to Rs. 23,27,000/-.

8. Having regard to the date of accident, following the ruling in the case of *Shriram General Insurance Co Ltd v. Usha*, MAC.APP.No.160/2015, decided on 05.05.2016, the awards under the heads of loss of love and affection, loss to estate and funeral expenses are increased to 1,50,000/- , 50,000/- and 50,000/- respectively.

9. Therefore, the total compensation in the case is computed as $(23,27,000 + 1,50,000 + 50,000 + 50,000)$ Rs. 25,77,000/- (Rupees twenty five lacs and seventy seven thousand only). The award is reduced accordingly. Needless to add it shall carry interest as levied by the tribunal.

10. By order dated 09.12.2016, the insurance company had been directed to deposit the entire awarded amount with interest with the tribunal within four weeks as pre-condition to the stay against execution. By order dated 15.05.2017 read with order 31.05.2017, part of the deposited amount was permitted to be released, the balance retained. The tribunal shall now calculate the balance payable to the claimants in the terms of the modification ordered above and release the same, refunding the excess in deposit to the insurance company.

11. Statutory amount shall be refunded.

12. This disposes of the appeal and the application filed by the appellant.

R.K.GAUBA, J.

OCTOBER 26, 2017

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