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

Decided on: 16th August, 2017

\+ MAC.APP. 115/2017

AFSANA BEGAM & ORS ..... Appellants

Through: Mr. Partap Singh, Advocate with Ms. Sinthiya Bhatia, Advocate

versus

MANJIT SINGH & ORS (THE NEW INDIA INSURANCE CO LTD) ..... Respondents

Through: Mr.Anshum Jain, Advocate for R-3.

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

<u>JUDGMENT (ORAL)</u>

1. Saeed Khan, aged 29 years, suffered injuries in a motor vehicular accident that occurred on 15.06.2014 due to negligent driving of bus bearing registration No.HR-46D-1190, admittedly insured against third party risk with the third respondent (insurer) and died in the consequence. The appellants, they being the members of the family dependent upon him, instituted accident claim case (Suit No.842/2014) seeking compensation.

2. The Motor Accident Claims Tribunal (the tribunal), by its judgment dated 19.05.2016, accepted the claim for compensation and awarded compensation in the sum of Rs.16,43,762/- and directed the

insurer to pay the same with interest @ nine per cent (9%) per annum, calculating thus:-

Sl.No.	Head	Amount in (Rs.)
1.	Loss of financial dependency	13,08,762/-
2.	Loss of love and affection to each child (two children)	2,00,000/-
3.	Loss of love and affection to father	50,000/-
4.	Loss of companionship to wife	50,000/-
5.	Loss of Estate	10,000/-
6.	Funeral expenses	25,000/-
	Total	16,43,762/-

3. The loss of dependency was worked out on the basis of assumed earnings of Rs.8554/-, it being the minimum wages for unskilled worker at the relevant point of time, from which one-fourth ($1/4^{th}$) was deducted towards personal and living expenses and the multiplier of 17 was applied.

4. The appellants seek enhancement of the compensation submitting that by evidence they had proved that the deceased was earning his livelihood as a painter and, therefore, minimum wages of skilled worker should have been adopted as the bench mark. It is also their grievance that non-pecuniary heads of damages awarded by the tribunal are inadequate.

5. The contention that the claimants had proved that the deceased was earning his livelihood as a painter must be accepted. The evidence of the first appellant, appearing as PW-1, to this effect remained unchallenged. But then, it not having been shown that the deceased had undergone any special training to work for gain as a painter, it will not be proper to apply the minimum wages of a skilled worker. Given the experience that he would have gained over the period, the minimum wages of semi-skilled worker would be the appropriate bench mark.

6. Since the accident had occurred on 15.06.2014, the minimum wages of semi-skilled worker at Rs.9438/- are assumed to be the income. Thus, the loss of dependency is re-calculated as (9438/- x 3/4 x 12 x 17) Rs.14,44,014/- rounded off to Rs.14,45,000/-.

7. The amount awarded under the non-pecuniary heads is not in *sync* with the dispensation by this court. 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 Rs.1,50,000/- each towards loss of love & affection and towards loss of consortium and Rs.50,000/- each towards loss of estate and funeral expense are added. Hence, the total compensation payable in the case comes to (Rs.14,45,000/- + 1,50,000/- + 1,50,000/- + 50,000/- + 50,000/-) Rs.18,45,000/-.

8. The award is increased accordingly. It shall carry interest as levied by the tribunal.

9. The insurer is directed to satisfy the enhanced award by requisite deposit with the tribunal within thirty days, whereupon the same shall be released to the claimants in terms of the apportionment ordered by the impugned judgment.

10. The appeal stands disposed of in above terms.

R.K.GAUBA, J.

AUGUST 16, 2017
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