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

Decided on:- 18th April, 2018

\+ MAC.APP. 861/2013

SMT ANARKALI & ANR ..... Appellant

Through: Mr. Rajnish K. Jha, Adv.

versus

SHRI VIJAY PAL YADAV & ORS ..... Respondents

Through: Mr. Pankaj Gupta, Adv. for R3.

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

ORDER (ORAL)

1. Deepak Kumar, bachelor son, aged 24 years, of the first appellant, died due to the injuries suffered in a motor vehicular accident that occurred on 07.02.2011 on account of rash driving of the bus bearing registration no. DL-1PB-8766 (the bus), the first respondent being at the wheels, it being registered in the name of the second respondent and concededly insured against third party risk, for the period in question with the third respondent (insurer). The accident claim case (MACT 92/2011) was instituted on 21.04.2011. The Motor Accident Claims Tribunal held inquiry and, by judgment dated 26.04.2013, it accepted the case of the claimants, holding the bus driver responsible for the fatal accident. It awarded compensation in the total sum of Rs.4,81,800/-, this inclusive of Rs.4,36,800/-

towards loss of dependency, Rs.25,000/- towards loss of love and affection, Rs.10,000/- towards cremation charges and Rs.10,000/- for loss of estate. The tribunal awarded interest at the rate of 7.5% per annum and has directed the insurer to pay.

2. Feeling aggrieved with the quantum of compensation, the claimants have come up to seek enhancement.

3. The submissions of the appellants/claimants are that the tribunal fell into error by assuming the income on the basis of minimum wages at Rs.5,278/- rather than going by the evidence about his income from Worldwide Flight Service India Pvt. Ltd. where he was engaged as a loader, his salary having been proved by pay-slip (Ex-PW2/2) at Rs.5,711/- per month. The claimants further point out that the tribunal has not factored in the element of future prospects and has apllied the multiplier of 14, ignoring the fact that the deceased was 24 years old. Placing reliance on the ruling of Constitution Bench of the Supreme Court rendered on 31.10.2017 in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors.*, suitable corrections in the award are prayed.

4. The submissions of the claimants in appeal are found to be correct. Indeed, the claimants have proved that the deceased was employed, though temporarily, as a loader with the afore-mentioned entity. In these circumstances, the element of future prospects to the extent of 40% should have been added. Further, having regard to the age of the deceased, the multiplier of 18 would apply.

5. It was also argued on behalf of the claimants that having regard to the fact that the claimants included a younger brother, the deduction on account of personal and living expenses should have been restricted to 1/3rd. This submission cannot be accepted. It is a case of a bachelor's death where only the widowed mother can be treated as the dependent, in absence of any proof of dependency of the junior sibling, who admittedly was an adult at the time of the cause of action.

6. Thus, the compensation is re-determined. The loss of dependency is computed as [5711 x 140 ÷ 100 ÷ 2 x 12 x 18] Rs.8,63,503/- rounded off to Rs.8,64,000/-.

7. Keeping in view the dispensation of *Pranay Sethi* (supra), the non-pecuniary damages in the sum of Rs.15,000/- each under the heads of loss of estate and funeral expenses only can be added. In this view, the total compensation comes to [8,64,000 + 15,000 + 15,000] Rs.8,94,000/- (Rupees Eight Lakhs and Ninety Four Thousand Only). The award is enhanced accordingly.

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 tribunal had apportioned 25% of the awarded amount to the second appellant. There being no challenge, the said dispensation shall remain undisturbed. However, it is clarified that the entire enhanced portion of the award including the amount payable on account of

increase in the rate of interest shall go to the first appellant (mother) only, it to be released to her in the form of fixed deposit receipt taken out from a nationalized bank for a period of ten years with right to draw periodic interest.

10. The third respondent (insurer) is directed to satisfy the award as modified above by requisite deposit with the tribunal within 30 days making it available for it to be released to the claimant.

11. The appeal is disposed off in above terms.

R.K.GAUBA, J.

APRIL 18, 2018/*uj*