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

% *Judgment delivered on: 17<sup>th</sup> September, 2013*

+ **MAC.APP. 950/2011 & CM No.19712/2011**

NEW INDIA INSURANCE CO LTD. .... Appellant

Through: Mr.K.L. Nandwani, Advocate.

Versus

RAJPAL & ORS ..... Respondents

Through: Mr. Gurmeet Singh Hans and  
Mr.Gurvinder Singh, Advocates.

**CORAM:**  
**HON'BLE MR. JUSTICE SURESH KAIT**

**SURESH KAIT, J. (Oral)**

**MAC.APP. 950/2011**

1. The present appeal is directed against the impugned award dated 26.07.2011, whereby the learned Tribunal has granted a compensation of Rs.9,27,200/- with interest at the rate of 7.5% *per annum* from the date of filing of the petition till the date of realization of the amount.

2. Learned counsel appearing on behalf of the appellant/Insurance Company has mainly argued on three points. Firstly, the claimants pleaded in the claim petition that the deceased was earning a sum of Rs.4,500/- per

month, whereas the learned Tribunal has considered his monthly income as Rs.6,448/- in view of the minimum wages applicable to a matriculate.

3. The second ground argued by the learned counsel for the appellant/Insurance Company is that the claimants have failed to prove the negligence on the part of the driver of the offending vehicle in the accident in question which occurred on 27.08.2010. He submitted that it being a case of accident between two vehicles, the learned Tribunal has failed to consider the contributory negligence on the part of the deceased.

4. To strengthen his arguments, learned counsel for the appellant/Insurance Company has relied upon the case of **Rajesh Kumar Vs. Yudhvair Singh & Anr., 2008 ACJ 2131**, wherein the Supreme Court has observed as under:-

*“7. The claim petition was filed under Section [166](#) of the Act and not under Section [163A](#) thereof. It was contended by the claimant-appellant that the driver of the bus in question was rash and negligent as a result whereof, the accident took place. By reason of Section [167](#) of the Act, an injured person had the option either to file a claim under the Motor Vehicles Act or the Workmen's Compensation Act, if both the Acts apply. It is, therefore, a case where the claimant could have filed at his option an application under the Workmen's Compensation Act. Section [163A](#) provides for filing of a claim petition where an accident took place by reason of use of the motor vehicle. It is not necessary to prove any fault on the part of the driver or the vehicle. The Tribunal in a proceeding arising under Section [166](#) of the Act is required to hold a full fledged trial. It is required to collect data on the basis whereof, the amount of compensation can be determined. Under Section [163A](#) of the Act, however, the question of liability and extent of proof*

*thereof are not justiciable. The Tribunal can determine the amount on the basis of the basic datas provided therefor.*

*Explanation appended to Section [163A](#) of the Act, reads, thus:*

*“Explanation.--For the purposes of this Sub-section, 'permanent disability' shall have the same meaning and extent as in the Workmen's Compensation Act, 1923.”*

5. The learned Tribunal has relied upon the statements of PW1 Smt.Reena/widow of the deceased and PW2 Rajpal/father of the deceased, who deposed that on 27.08.2010 at about 11.14 AM, the deceased victim was going from Badarpur to Ashram in the Bus bearing No.DL-1PB-0628 driven by respondent No.4 in a rash and negligent manner due to which he met with an accident and suffered fatal injuries. The statements of these witnesses are corroborated by the certified copies of the criminal case pertaining to FIR No. 252/10, P.S. Sarita Vihar Ex.PW1/B (Colly). The certified copies of the FIR mentioned above, site plan, arrest memo of the driver of the offending vehicle, mechanical inspection report and the post-mortem report of the deceased/victim are on record.

6. To determine the negligence on the part of the driver of the offending vehicle, the learned Tribunal has relied upon the case of ***National Insurance Company Limited Vs. Pushpa Rana, 2009 ACJ 287***, decided by the Coordinate Bench of this Court. It is held that where the claimants filed either the certified copies of the criminal record or the criminal record showing the completion of investigation by the police or issuance of charge sheet under Sections 279/304-A IPC or the certified copy of the FIR or the recovery memo of the mechanical inspection report of the offending vehicle,

then these documents are sufficient proof to reach to a conclusion that the driver was negligent.

7. On the issue of monthly income of the deceased, it is claimed by the claimants that the deceased was working as a Clerk at Pitampura, New Delhi and was getting a monthly salary of Rs.4,500/-. It is pertinent to note that the claimants have not produced any documentary proof regarding the income. The position would have been different if this fact has been proved by the documentary proof and in that eventuality; there was no requirement to consider the monthly income of the deceased on the basis of the Minimum Wages Act, 1948. Since the claimants have failed to produce any documentary proof regarding the salary received by the deceased, therefore, mere bald statement will not serve the purpose. The settled legal position is that if the claimants have failed to prove the income of the deceased, then in that case, the Tribunal and court have to consider the income of the deceased on the basis of the Minimum Wages Act prevalent at the relevant time. So, in this case, the learned Tribunal, in the absence of any cogent evidence regarding the monthly income of the deceased, has rightly considered the income of the deceased as per the Minimum Wages Act applicable to a matriculate at the relevant time, which was Rs.6,488/- on the date of the accident, i.e., 27.08.2010.

8. Thirdly, the learned counsel for the appellant/Insurance Company has argued that without appreciating the law and evidence on record, the learned Tribunal has granted the compensation of Rs.9,27,200/- with interest at the rate of 7.5% *per annum* from the date of filing the petition till the realization

of the amount, despite the fact that vide order 18.12.2010, it was directed that no interest will be payable from 01.11.2010 till the date of conclusion of entire PE, which was concluded on 06.07.2011.

9. Learned counsel further submitted that in view of the above, the learned Tribunal has erred in granting interest for the abovenoted period of nine months, i.e., from 01.11.2010 to 06.07.2011, which is contrary to the order dated 18.12.2010.

10. Learned counsel appearing on behalf of the respondents/claimants has fairly conceded that the interest for the period mentioned above has been wrongly granted by the learned Tribunal. Therefore, the said interest may be deducted from the compensation amount.

11. I order accordingly.

12. Consequently, the Registrar General of this Court is directed to release the compensation amount with upto date interest except the interest for the period from 01.11.2010 to 06.07.2011, in favour of the respondents/claimants as per the terms and conditions fixed by the learned Tribunal in its order dated 26.07.2011.

13. The statutory amount shall be released in favour of the appellant/Insurance Company along with interest for the period mentioned above.

14. In view of the above, the appeal is partially allowed.

**CM No.19712/2011 (for stay)**

With the disposal of the appeal itself, this application has become *infructuous*. The same is accordingly disposed of.

**SURESH KAIT, J.**

**SEPTEMBER 17, 2013**  
**sb/RS**