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

% *Judgment delivered on: 20th March, 2014*

+ **MAC.APP. No.81/2013**

TATA AIG GENERAL INSURANCE CO. LTD. Appellant
Represented by: Mr. K.L. Nandwani, Adv.

Versus

BHAVNA DHINGRA AND ORS. Respondents
Represented by: Mr. Uchit Bhandari, Adv. for R1 to
R3.
Mr. Ankit Aggarwal, Adv. for R4.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide the present appeal, appellants / claimants have assailed the award dated 21.11.2012, whereby Ld. Tribunal awarded compensation for an amount of Rs.14,35,150/- with interest @ 9% *per annum* from the date of filing of the Claim Petition till realization of the amount.

2. Brief facts of the case are that deceased Manmohan Dhingra, a shopkeeper met with a fatal accident on 18.01.2009 at about 6.30 PM near Desh Bandhu Gupta College while on his way for a customer meeting with M/s. Ushma Services at C.R. Park, when his Scooter bearing registration no. DL-3SZ-0750 was hit by the offending vehicle, Maruti Esteem bearing registration no. DL-3CM-9449. He was firstly removed to Sukhda Hospital,

Greater Kailash-I, thereafter to AIIMS on the advice of the Doctor, where at about 11 PM, he breathed his last.

3. Mr. K.L. Nandwani, Ld. Counsel appearing on behalf of the appellant/ Insurance Company submits that Ld. Tribunal, without going into the merits of the case and the evidence produced before it, passed an award of Rs.14,35,150/- in favour of the respondents / claimants. Thus, completely ignored the settled law that the eye witness is must to prove the accident. However, in the present case, no such witness has been examined by the claimants.

4. Ld. Counsel further submits that the deceased was aged about 54 years on the date of accident and 50% has been added in his actual income towards future prospects, which is contrary to the settled law.

5. He further submits that loss of dependency has been wrongly calculated as the claimants have wilfully not filed the Income Tax Return of the earning from the shop of the deceased which was taken over by his son after his death and is still functioning. Thus, there is no loss of income of the deceased. Therefore, claimants are not entitled for any loss of income and future prospects.

6. On the other hand, Mr. Uchit Bhandari, Ld. Counsel appearing on behalf of the claimants submits that PW1, Bhavna Dhigra, wife of the deceased, deposed that deceased was the sole bread earner of the family comprising of herself and two sons. The untimely demise of the deceased, due to the accident in question, has caused severe jolt in the family as she is left alone as a housewife and unable to cope up with the complex worthy

affairs around. The elder son of the deceased just completed his CA, whereas his younger son who was pursuing MBA from Symbiosis Institute, Pune, suffered complete loss of his studies as he was compelled to abandon his studies in between in order to run the shop left by his deceased father. Since the deceased's younger son does not have much experience to run the shop, there has been severe loss of income. The family has suffered great loss on account of dependency as the deceased during his lifetime was commanding handsome income of not less than Rs.50,000/- per month.

7. On the issue of 50% future prospects granted towards actual income of the deceased, Ld. Counsel appearing on behalf of the respondents / claimants submits that age of the deceased at the time of accident was 54 years and keeping in view the dictum of ***Rajesh and Ors. Vs. Rajbir Singh and Ors. 2013 (6) SCALE 563*** the claimants are entitled for addition of 15% in the actual income of the deceased towards future prospects.

8. I have heard ld. Counsels for the parties.

9. The Claim Petition was filed under Section 166 of Motor Vehicles Act, 1988. The factum of negligence is attributable to the erring driver Kamal Kumar Dutta in driving the Maruti Esteem Car bearing registration no. DL-3CM-9449 rashly and negligently as has been proved by respondent no. 1, Smt. Bhavna Dhingra, wife of the deceased and PW2, Inspector Raj Kumar, who had filed a chargesheet in FIR registered at PS-Kalkaji. PW1 has specifically stated that she had received a telephone call at her residence number from a person who had witnessed the accident, and informed her that deceased was in precarious condition and was removed to Sukhda Hospital. On getting the above information, she along with one of her son

went to the aforementioned hospital, where looking at the condition of the deceased he was advised to remove to the Trauma Centre. She further stated that the driver / owner of the offending vehicle Kamal Kumar Dutta, who still then was very cooperative to them, suddenly disappeared from the spot sensing the trouble.

10. The mode and manner of the accident was reported by the eye witness while saying that the accident had been caused by the involvement of the offending vehicle, Maruti Esteem Car. Moreover, FIR in this case was lodged at DD entry at the instance of H.Ct. Veer Singh of PS-Kalkaji on receiving the information from PCR van regarding the factum of the accident having been taken place in front of Desh Bandhu Gupta College and the injured was being removed by the PCR to the Hospital.

11. After the MLC was collected, pursuant to subsequent information, the IO initiated the process of investigation and thereafter had seized the Bajaj Chetak Scooter and Maruti Esteem Car involved in the accident.

12. The owner of the offending vehicle did not bring any evidence on record to show that damage on the scooter was caused in a manner which could not have been co-related with the damage on the Maruti Esteem Car. Moreover, mechanical inspection report showing the damage on the left side lower bumper corner proves its involvement in the accident. The correctness of the site plan is also not in dispute.

13. The Court questions were put to PW2, Inspector Raj Kumar, who replied as under:

“Q. What action was taken subsequent to receiving the DD No. 31B and registration of FIR?”

Ans. After receiving the copy of the DD entry HC Nahar Singh visited the spot and concerned hospital and made endorsement on DD entry and got the case registered.

Q. Can you confirm that the endorsement by HC Nahar Singh were made on the basis of the ground position after verifying the actual facts from the inquiry conducted on spot?

Ans. Definitely he had verified all the facts and collected the medical papers from the hospital and the inquiry was as per the actual circumstances.

Q. Can you say that the circumstance in which the accident was caused were rightly recorded inquired verified and reported by the HC. Nahar Singh?

Ans. Yes, though I did not record his statement I examined him and observed that the circumstance leading to accident were rightly recorded.”

14. In cross examination, PW2 deposed that the investigation was transferred to him as some doubt was raised about the preliminary investigation. Accordingly, he conducted the investigation and observed that there were no lapses. He called the witnesses again during the process of verification as there was a complaint by the accused party that the investigation was not being conducted properly. He called the accused and his wife through notice, which was shown to the court, available in the file. Thereafter, they were satisfied.

15. On the issue of income, Ld. Tribunal has relied upon the Income Tax Return filed by the claimants while assessing the income of the deceased as R.1,68,966/- *per annum* and accordingly granted the compensation.

16. Perusal of the record and evidence reveal that appellant has not brought any material on record or examined any witness to belie the statements of PW1 and PW2 recorded before the Ld. Tribunal.

17. In view of above discussion, I am of the considered opinion that Ld. Tribunal ought to have added 15% in the actual income of the deceased towards future prospects. It is ordered accordingly.

18. Consequently, the compensation comes as under:

Sl. No.	Heads of Compensation	Compensation granted by Ld. Tribunal	Compensation granted by this Court
1.	Loss of dependency	Rs.13,93,150/-	Rs.10,68,077/-
2.	Loss of consortium	Rs.10,000/-	Rs.10,000/-
3.	Loss of Estate	Rs.10,000/-	Rs.10,000/-
4.	Loss of Love and Affection	Rs.10,000/-	Rs.10,000/-
5.	Funeral Expenses	Rs.10,000/-	Rs.10,000/-
6.	Treatment expenses	Rs.2,000/-	Rs.2,000/-
	TOTAL	Rs.14,35,150/-	Rs.11,10,077/-

Resultantly, the compensation is assessed as Rs. 11,10,077/-.

19. Hence the reduced compensation comes to Rs.3,25,073/-.

20. In view of above, Registry is directed to release the statutory amount with excess amount with proportionate interest in favour of the appellant.

21. The balance compensation amount, if any, be released in favour of the respondents / claimants in terms of award dated 21.11.2012 on taking steps by them.

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

SURESH KAIT, J.

MARCH 20, 2014

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