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

Date of Decision: 14th March, 2016

+ **MAC APPEAL No.811/2010**

IFFCO TOKIO GEN. INS. CO. LTD. Appellants

Through: Ms. Shantha Devi Raman, Adv.

Versus

MD. MUSLIM @ MD. HUSSAIN & ORS. Respondents

Through: Mr. Amir Gaur, Amicus Curaie, Adv.
for R-3 & 4.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first and second respondents (hereinafter referred to as the claimants) had instituted accident claim case under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) registered as petition No. 44/2009 (2006) before the motor accident claims tribunal (the tribunal) seeking compensation on account of death of their son Mohd. Farmood Ansari in a motor vehicular accident that occurred at about 9.45 a.m. on 21.10.2006 wherein he suffered fatal injuries while travelling in a three wheeler scooter bearing registration No. DL 1RF 5316 (the offending vehicle) driven by the third respondent, it having turned turtle after hitting an electric pole on roadside. The claimants had impleaded the fourth respondent, the registered owner of the offending vehicle, as a party respondent in addition to the

appellant insurance company (insurer) which had admittedly issued a third party insurance policy in its respect for the period in question.

2. The tribunal awarded compensation in the sum of ₹ 5,61,860/- which excludes the amount of ₹ 50,000/-, earlier directed to be paid (on the no-fault liability principle) to the claimants, directing the insurance company to pay the compensation.

3. The insurance company questions the impugned judgment and award on several grounds. It argues that there was no proof of negligence in driving and that the tribunal, having adopted the method of calculation of compensation under Section 163 A of MV Act should have followed the principles laid down in the second schedule to MV Act. It is further the contention of the insurance company that there was breach of terms and conditions of the insurance policy in that the TSR had been wrongly handed over by the registered owner/insured (fourth respondent) to the third respondent for being plied on hire in breach of terms and conditions of the permit and consequently of the insurance contract.

4. The contention of the insurance company that there was no proof adduced as to negligence cannot be accepted. The evidence on record included the copies of the evidence gathered by the police during investigation of the first information report that had been registered in respect of the accident in question. The evidence on record clearly shows that the TSR in which the deceased was travelling had struck against the electric pole. With no explanation whatsoever having come forth as to why

the TSR should strike against an electric poll, negligence on the part of its driver is writ large on the record of the case.

5. The tribunal wrongly invoked the provision of Section 163 A of MV Act in a case where the compensation was being sought under Section 166 of MV Act. In absence of proof of income, the tribunal correctly adopted the minimum wages of ₹ 3,312/- for an unskilled worker payable around the time of accident (21.10.2006). Having recorded a finding that only the mother was dependant, deduction on account of personal & living expenses to the extent of 50% required to be made. Thus, the monthly loss of income comes to ₹ (3,312 /2) ₹ 1,656. Since the deceased was not in a regular employment wherein he would be entitled to any progressive increase in income, there is no possibility of any future prospects to be factored in. [*Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 and *Reshma Kumari V. Madan Mohan* (2013) 9 SCC 65].

6. Since the age of the mother at the relevant point of time was 37 years, the tribunal rightly adopted the multiplier of 15. In this view, the total loss of dependency comes to (1,656 X 12 X 15) ₹ 2,98,080/-. It is at the same time noted that the tribunal awarded meager amounts of ₹ 5,000/- each under the heads of funeral expenses and loss of estate. No award was made on account of loss of love & affection. This Court is duty bound to bring in suitable correction. Following the view taken in *Rajesh & Ors. vs. Rajbir & Ors.*, (2013) 9 SCC 54, and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, ₹ 1,00,000/- is awarded on account of loss of love & affection besides ₹ 25,000/- each towards funeral expenses and loss of estate. The claimants had also proved having incurred ₹ 13,200/- towards charges for transportation of

the dead body from Delhi to their native place. Adding these components, the total compensation payable in the case comes to ₹ (2,98,080 + 1,00,000 + 25,000 + 25,000 + 13,200) ₹ 4,61,280/- rounded off to ₹ 4,62,000/-. The amount of ₹ 50,000/- paid under Section 140 MV Act will have to be suitably adjusted.

7. The award is accordingly modified/reduced. It shall carry interest as levied by the tribunal.

8. The ground on which the insurance company raised the issue of breach of terms and conditions of the policy is that the registered owner (fourth respondent) had unauthorisedly handed over the TSR to the third respondent (the driver) for plying it on hire. It refers to judgment of the Supreme Court in *M.C. Mehta vs. Union of India & Ors.* JT 1997 (10) SC 209 to contend that this amounts to breach of permit conditions.

9. The letting of the TSR on hire may amount to breach of permit conditions entailing penal action under the MV Act. But this, however, does not mean that the insurance company can refer to the said breaches as fundamental breaches of the insurance policy so as to seek to be absolved of its liability to indemnify. This Court in a series of judgment on the subject has rejected such contentions of the insurance companies. Reference may be made to *National Insurance Co. Ltd. vs. Ram Rati & Ors.* in MAC Appeal No. 11/2008 decided on 18.01.2008, *Mahender Singh vs. Oriental Insurance Co. Ltd. & Ors.* in MAC Appeal No. 430/2010 decided on 10.5.2012, *National Insurance Company Ltd. vs. Suresh Kumar & Ors.* in MAC Appeal No. 424/2009 decided on 1.11.2012 and *New India Assurance Co. Ltd. vs.*

Prem Rani & Ors. in MAC appeal No. 885/2010 decided on 18.3.2015. In *Mahender Singh* (supra), the learned single judge while repelling similar contentions of the insurance company, in almost identical fact situation, observed as under:-

“Thus, the user of a transport vehicle for the purpose not allowed by the permit would be using a goods vehicle as a passenger vehicle, a passenger vehicle as a goods vehicle, etc. and not each and every contravention of the condition of permit issued by the concerned Transport Authority. Thus, simply because the vehicle was driven by a person other than the permit holder cannot be said to be a user of the transport vehicle for the purpose not allowed by the permit under which the vehicle was used.”

10. For the foregoing reasons, the plea of the insurance company about breach of terms and conditions of the policy is rejected.

11. By order dated 17.12.2010, the appellant had been directed to deposit the entire awarded compensation with upto date interest with the Registrar General within the period specified. The Registrar General shall now calculate the amount payable to the claimants in terms of the modified award as above and release the same with upto date interest in terms of the impugned judgment, refunding the excess with statutory deposit, if made, to the insurance company.

12. This Court records its appreciation for the able assistance of Mr. Amit Gaur, *Amicus Curaie*.

R.K. GAUBA
(JUDGE)

MARCH 14, 2016
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