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

Decided on: 5th March, 2015

\+ **MAC.APP 16/2014**

THE NEW INDIA INS. CO. LTD. ..... Appellants
Through: Mr.J.P.N. Shahi, Advocate

versus

BIMLESH & ORS. ..... Respondents
Through: Mr. Kamaldeep Advocate for Respondents no.1 to 7

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

JUDGMENT

G. P. MITTAL, J. (ORAL)

1. The appeal is directed against the judgment dated 14.10.2013 passed by the Motor Accident Claims Tribunal (Claims Tribunal), whereby compensation of Rs.18,42,408/- was awarded for the death of Ved Ram who suffered fatal injuries in a motor vehicle accident which occurred on 09.10.2012.

2. During enquiry before the Claims Tribunal, it was claimed that deceased Ved Ram used to carry out the job of cleaning at the house of Mr. Yashwant Sinha, former Union Minister and was also running a food stall. He was drawing a salary of Rs.6,000/- from Mr. Yashwant Sinha for part time job and earning another

Rs.15,000/- from his employment by running the stall. The Claims Tribunal in the absence of any evidence with regard to the deceased's income took minimum wages of an unskilled worker, added 50% towards the future prospects, deducted $1/5^{th}$ towards personal and living expenses, applied the multiplier of 16 (as per the age of the deceased) to compute the loss of dependency as Rs.16,17,408/-. The Claims Tribunal further awarded certain amounts towards non-pecuniary damages to award the overall compensation of Rs.18,42,408/-.

3. The following contentions are raised on behalf of the Appellant:

(i) In the absence of any evidence with regard to the future prospects, addition of 50% in deceased's estimated income could not have been granted.

(ii) The compensation awarded towards non-pecuniary damages is on the higher side; and

(iii) The Claims Tribunal held that there was breach of the terms and conditions of the insurance policy still recovery rights were not granted holding that it was a non-fundamental breach of the terms and conditions of the policy.

4. On the other hand, the learned counsel appearing for Respondent no. 7 states that the compensation awarded is too meager and that the Appellant has been rightly made liable to pay the compensation.

Income of the deceased and compensation.

5. I have perused the trial court record. Smt. Vimlesh, deceased's widow filed her Affidavit Ex.PW-1/A. In para 3 of the Affidavit, she testified as under:-

> *"That my late Husband was working as part-time cleaning worker working at Quarter No.6, Kushak Road, New Delhi-110011 and used to carry out the job of cleaning the car of Mr. Yashwant Sinha, Hon'ble Ex-Minister (BJP) in the morning and evening for two hours each and earning ₹6,000/- p.m. However, during the day my husband was running small joint selling Chinese food and used to earn ₹15,000/- p.m. He was aged about 33 yrs at the time of his death."*

6. In cross-examination, a suggestion was given that PW-1's husband was not earning Rs.6,000/- p.m. by doing part time work and he was not earning Rs.15,000/- p.m. as stated in para 3 of the Affidavit. At the same time, no suggestion was given to Respondent no.1 that the deceased was not doing the cleaning

work at the house of Mr. Yashwant Sinha, Former Union Minister. No suggestion was given that the deceased was not running a stall and selling Chinese food. In view of this, the Claims Tribunal should have made assessment of the deceased's income from carrying out the work which was established. It was borne out from the record that the deceased was living in the servant quarters in the house allotted to Mr. Yashwant Sinha. Even in absence of any documentary evidence, it can be assumed that the deceased must be earning Rs.2,500/- p.m. from doing part time cleaning work and Rs.8,000/- p.m from selling Chinese food. Thus, I take income of the deceased to be Rs.10,000/- p.m.

7. I agree with the learned counsel for the Appellant that in the absence of any finding with regard to the future prospects addition of 50% was not permissible. In this regard a reference may be made to judgment of this Court in *HDFC Ergo General Insurance Co. Ltd. v. Smt. Lalta Devi and Ors. MAC APP No. 189/ 2014 decided on 12.01.2015* whereby the question was dealt with a great length.

8. Hence, the loss of dependency applying *Sarla Verma (Smt.) &*

Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121 which has been affirmed by three judge bench in *Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65 comes to* Rs.16,12,800/- (Rs.10,500 x 12 - 1/5 x 16).

9. The compensation awarded towards non-pecuniary has to be consonance with *Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54*. Thus, in addition, the claimants would further be entitled to a sum of Rs.10,000/- towards loss to estate, Rs.1,00,000/- each towards loss of love and affection and loss of consortium and Rs.25,000/- towards funeral expenses. The overall compensation hence, comes to Rs.18,47,800/-. The compensation awarded therefore, cannot be set to be exorbitant/ excessive.

10. As far as liability of the Appellant Insurance Company to pay the compensation is concerned, I agree with the conclusion reached by the Claims Tribunal on a different reasoning. In my view, the Appellant failed to prove that there was willfull and conscious breach of the terms and conditions of the insurance policy by the insured and therefore, the Appellant cannot avoid its liability. It is borne out from the record that Respondent no.1

driver of the vehicle filed his affidavit Ex.R-1W1 and entered the witness box as R1W1.He deposed that he possessed a license to drive the vehicle. He was not given a suggestion that the license possessed by him was not valid to drive a commercial vehicle. All the more, what is required to be proved by the insurer is that there was willful breach of the terms and conditions of the policy by the insured. No notice was given to the insured to produce the driving license held by the driver. Without giving notice to the insured, it cannot be said as to under what circumstances the driver was engaged and which license was seen by him at the time of engaging the driver. Thus, the insurance company cannot escape its liability.

11. The appeal therefore has to fail. The same is accordingly dismissed.

12. The compensation awarded shall be released / held in a fixed deposit in terms of the order passed by the Claims Tribunal.

13. The statutory amount, if any, deposited shall be refunded to the Appellant.

(G.P. MITTAL)
JUDGE

MARCH 05, 2015/rs