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

Decided on: 20th May, 2015

\+ **MAC. APP. 244/ 2014**

RELIANCE GENERAL INSURANCE CO. LTD ...... Appellant

Through: Mr. Neerja Sachdeva, Advocate

Versus

SMT. NEETU DEVI AND OTHERS ..... Respondents

Through: None

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

<u>J U D G M E N T</u>

<u>G. P. MITTAL, J.</u> (ORAL)

1. The Appellant has filed the present appeal against the judgment dated 10.12.2013 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of ₹15,77,575/- was awarded in favour of Respondents no.1 to 4 for the death of Shri Amar Kumar, who suffered fatal injuries in a motor vehicular accident which occurred on the intervening night of 04-05.03.2010.

2. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of the

crane bearing Registration no.HR-63A-5804 by its driver Respondent no.6. Further, the Claims Tribunal took minimum wages of a non-matriculate on the date of the accident, added 50% towards future prospects, deducted 1/4 towards personal and living expenses and applied the multiplier of 17 to compute the loss of dependency at ₹13,42,575/-.

3. In addition, the Claims Tribunal awarded a total sum of ₹2,35,000/- towards non-pecuniary damages to compute the overall compensation of ₹15,77,575/-. The same was to be paid by the Appellant Insurance Company with right to recover the amount paid from Respondent no.5 (insured) as Respondent no.5 had failed to produce the original Driving License of Respondent no.6 (driver) despite service of notice to him under Order XXII Rule 8 of the Code of Civil Procedure, 1908 (CPC).

4. The following contentions are raised by the learned counsel for the Appellant Insurance Company:-

(i) The driver of the offending vehicle *i.e.* crane bearing Registration no.HR-63A-5804 did not possess a valid driving license at the time of the accident in question which amounts to breach of the terms and conditions of the

Insurance Policy. Thus, the Appellant ought to have been exonerated from its liability to pay the compensation rather than only granting recovery rights;

(ii) Father of the deceased could not be considered as dependent upon the deceased and therefore deduction towards personal and living expenses ought to have been 1/3 instead of 1/4 as taken by the Claims Tribunal;

(iii) Addition of 50% was wrongly made towards future prospects though there was no evidence with regard to permanent employment or good future prospects of the deceased; and

(iv) Award under non-pecuniary heads is made on higher side.

LIABILITY

5. It is urged by the learned counsel for the Appellant that the driver of the offending vehicle *i.e.* crane bearing Registration no.HR-63A-5804 did not possess a valid driving license at the time of the accident which amounts to breach of the terms and conditions of the Insurance Policy. This is evident from the fact that Respondent no.5 (insured) failed to produce the original Driving License of

Respondent no. 6 (driver) on record despite service of notice to him under Order XXII Rule 8 of the CPC. Thus, the Appellant ought to have been exonerated from its liability to pay the compensation completely rather than granting only recovery rights.

6. I have the Trial Court record before me.

7. Notice under Order XXII Rule 8 CPC dated 20.04.2012 (Ex. R4W1/2) sent to Respondent no.5 and postal receipts of the same (Ex.R4W1/3 (colly)) are available on record and proved by R4W1 Shri Navneet Goel, Deputy Manager, Legal, Reliance General Insurance Company Limited. However, original Driving License of Respondent no.6 is not placed on record. Thus, there is no evidence that Respondent no.6 held an effective and valid Driving License on the date of the accident. This amounts to wilful and conscious breach of terms and conditions of the Insurance Policy by Respondent no.5. However, in view of the three Judge Bench decisions of the Hon'ble Apex Court in *Sohan Lal Passi v. P. Sesh Reddy, (1996) 5 SCC 21; United India Insurance co. Ltd. v. Lehru and Ors., (2003) 3 SCC 338* and a judgment of this Court in *Oriental Insurance Company Limited v. Rakesh Kumar and Others, 2012 ACJ 1268,* the Insurance Company is only entitled to recovery

rights from the insured if it discharges proves that there was wilful and conscious breach of the terms and conditions of the Insurance Policy by the insured.

8. Since recovery rights have already been granted to the Appellant Insurance Company, I see no reason to interfere with this finding of the Claims Tribunal.

<u>COMPENSATION</u>

9. PW1 Smt. Neetu Devi, wife of the deceased Amar Kumar testified that her husband was employed as an Electrician with Respondent no.5 to remove electricity poles on the roads and he was earning more than ₹8,000/- per month from that job. The said fact was not disputed in her cross-examination as well. To the similar effect was the deposition of PW2 Shri Rakesh, co-worker of the deceased and eye-witness to the accident. Though there is no documentary proof with regard to the deceased's employment, yet it is established that at the time of the accident, the deceased was cutting an electricity pole with a gas cutter near Dhaula Kuan in front of a Petrol Pump on Gurgaon Road, NH-8. At that very time, Respondent no.6 on direction of Respondent no.5 to dismantle the pole itself by using the offending vehicle pushed the pole too hard which fell upon the

deceased leading to his death in itself proves the occupation of the deceased which was further corroborated by testimonies of PW1 and PW2. Thus, as an Electrician I believe the monthly income of the deceased to be at least ₹8,000/-.

10. Since the deceased was neither in permanent employment, nor is there any evidence available with regard to the deceased's good future prospects, no addition ought to have been made towards future prospects.

11. Further, since there is no evidence with regard to Respondent no.4 (deceased's father) being financially dependent upon the deceased, only Respondent no.1 (widow) and Respondents no.2 and 3 (minor children) can be taken as deceased's dependants. Thus, deduction towards personal and living expenses would be 1/3 in view of *Smt. Sarla Verma and Ors. v. Delhi Transport Corporation and Anr., (2009) 6 SCC 121*.

12. As per the School Leaving Certificate/Transfer Certificate of the deceased (Ex.PW1/12), his date of birth is 27.12.1981. Therefore, the deceased's age on the date of accident would be 28 years. Consequently, the appropriate multiplier as taken by the Claims Tribunal is 17.

13. The loss of dependency hence, come to ₹10,88,000/- (8,000/- x 12 x 2/3 x 17).

14. As far as award towards non-pecuniary damages is concerned, it is now settled that the legal representatives are entitled to a sum of ₹1,00,000/- each towards loss of love and affection and loss of consortium, ₹25,000/- towards funeral expenses and ₹10,000/- towards loss to estate in view of the three Judge bench decision of the Supreme Court in *Rajesh and Others v. Rajbir Singh and Others, (2013) 9 SCC 54* as granted by the Claims Tribunal.

15. The compensation is accordingly reduced from ₹15,77,575/- to ₹13,23,000/-.

16. By an order dated 18.03.2014, execution of the award was stayed on deposit of the entire awarded amount along with up-to-date interest accrued thereon by the Appellant and 80% of the same was ordered to be released to Respondents no.1 to 4.

17. The remaining compensation shall also be released to Respondents no.1 to 4 alongwith proportionate interest. The excess amount along with residue interest shall be refunded to the Appellant Insurance Company.

18. The appeal is disposed of in above terms.

19. Pending applications, if any, also stand disposed of.

20. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

MAY 20, 2015
sj