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

Date of decision: 22nd April, 2015

+ **MAC.APP. 395/2012**

UNITED INDIA INSURANCE CO. LTD. Appellant

Through: Mr. K.L. Nandwani, Advocate with
Mr. Manish Kaushik, Advocate

versus

MOHAN SINGH BISHT & ORS. Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

G. P. MITTAL, J. (ORAL)

1. The Appellant United India Insurance Co. Ltd. impugns the judgment dated 12.03.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of Rs.9,18,000/- was awarded in favour of Respondents no.1 and 2 for the death of Narendra Singh Bisht who suffered fatal injuries in a motor vehicular accident which occurred on 17.06.2010.
2. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of tanker bearing no. UP-13F-1639. The Claims Tribunal declined to believe

the salary of the deceased to be Rs.15,000/- per month as claimed by Respondents no.1 and 2 and proceeded to award the compensation on the basis of minimum wages of a skilled person.

3. Following contentions are raised on behalf of the Appellant:

- (i) The accident was not caused solely on account of rash and negligent driving of tanker bearing no. UP-13F-1639 driven by Respondent no.3. The deceased himself also contributed to the negligence; and
- (ii) The compensation awarded is excessive and exorbitant and Respondents no.1 and 2 were not financially dependent upon the deceased. Respondent no.1, deceased's father was getting pension of Rs.10,000/- per month, whereas Respondent no.2, deceased's unmarried sister was aged 34 years at the time of the accident and cannot be said to be dependent upon the deceased.

4. None appears on behalf of Respondents no.1 and 2.

NEGLIGENCE:

5. Respondents no.1 and 2 examined PW-2 Manoj Kumar Singh and PW-3 Arvind Bisht who deposed about the manner of the accident.

They deposed that tanker bearing no. UP-13F-1639 was being driven in a rash and negligent manner. A perusal of the site plan prepared in the criminal case FIR no.89/2010 under Section 279/304-A IPC P.S. Sadar also reveals that tanker bearing no. UP-13F-1639 had travelled on the wrong side to strike against the deceased's motorcycle. Hence, negligence on the part of the driver of the tanker bearing no. UP-13F-1639 was sufficiently established.

COMPENSATION:

6. Mohan Singh Bisht (PW-1), the deceased's father testified that he and his daughter, Petitioner no.2 were financially dependent upon the deceased. In cross-examination, PW-1 admitted that he was getting a pension of Rs.10,000/- per month from the Army wherefrom he had retired. At the same time, nothing was brought on record to contradict the statement of PW-1 that the sister was financially dependent on the deceased. Testimony of PW-1 in this regard remained unchallenged and unrebutted. Therefore, the Claims Tribunal rightly concluded that Petitioner no.2 was financially dependent upon her deceased brother.
7. During inquiry before the Claims Tribunal, it was claimed that at the time of the accident, the deceased was working as a driver of a

delivery van belonging to Hash Networks and was getting a salary of Rs.15,000/- per month. PW-1 Mohan Singh Bisht in his Affidavit testified that the deceased was working with Hash Networks as a driver-cum-delivery man. He also stated that before April, 2010, the deceased was employed with one Subhash Chand of M/s Anjali Tours & Travels. Mr. R.L.S. Rathore (PW-4) from M/s Hash Networks was also examined by Respondents no.1 and 2 to prove the deceased's employment with Hash Networks. A photocopy of the cheque for Rs.13,870/- which was issued by the previous employer towards his salary for previous dues was also produced on record. The Claims Tribunal, however, declined to believe all this evidence on the ground that the said cheque was dishonoured and that no Income Tax Return was produced on record by the subsequent employer Hash Networks. To say the least, the entire approach of the Claims Tribunal was illegal. Not only the employer was produced and there was documentary evidence in the shape of cheque (even if the same was dishonoured), there was a driving licence placed on record by Respondents no.1 and 2 to prove that deceased Narendra Singh Bisht was a driver of commercial TSR and commercial light motor vehicle. If the deceased was not a professional driver of goods vehicle, there

was hardly any need to obtain the said licence. Thus, I am inclined to believe the version of the Respondents that the deceased was working as a driver on a commercial vehicle and most likely with Hash Networks and was getting a salary of Rs.15,000/- per month.

8. Since the deceased was a bachelor and his unmarried sister was dependant on him and the father was not dependant, I am inclined to deduct $\frac{2}{3}^{\text{rd}}$ towards his personal and living expenses. The loss of dependency therefore, comes to Rs.7,80,000/- (Rs.15,000/- x $\frac{1}{3}$ x 12 x 13).
9. In addition, in view of the judgment in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54, Respondents no.1 and 2 are entitled to a sum of Rs.1,00,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss to estate.
10. The overall compensation thus, comes to Rs.9,15,000/- against the award of Rs.9,18,000/- granted by the Claims Tribunal.
11. In view of this, the award of Rs.9,18,000/- granted by the Claims Tribunal cannot be said to be excessive or exorbitant.
12. The appeal therefore, has to fail and is accordingly dismissed.

13. Pending applications also stand disposed of.
14. The compensation payable to Respondents no.1 and 2(claimants) shall be released/held in Fixed Deposit in terms of the orders passed by the Claims Tribunal.
15. On filing compliance report within four weeks, the statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

APRIL 22, 2015
pst