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

Date of decision: 12th January, 2015

+ **MAC. APP. No.680/2012**

NEW INDIA ASSURANCE CO. LTD.

..... Appellant

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

Versus

POONAM & ORS.

..... Respondents

Through: Mr. S.N. Parashar, Advocate for
Respondents no.1 to 4.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appellant New India Assurance Co. Ltd. impugns the judgment dated 25.02.2012 whereby compensation of Rs.17,16,496/- and counsel fee for a sum of Rs.75,000/- was awarded in favour of Mr. Lokesh Kumar, Advocate by the Motor Accident Claims Tribunal(the Claims Tribunal).
2. The impugned judgment is challenged on the following grounds:-

- (i) there was no negligence on the part of the insured vehicle; the accident took place because of negligence of the car driver; and
 - (ii) award of Rs.75,000/- towards counsel's fee is unjustified, illegal and not tenable.
3. The impugned judgment is supported by Mr. S.N. Parashar, the learned counsel for Respondents no.1 to 4. It is urged that even if it is admitted that a sum of Rs.75,000/- could not have been awarded towards counsel's fee, the compensation towards loss of consortium *i.e.* Rs.10,000/- was on the lower side. Relying on *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54, the learned counsel contends that the Respondents (claimants) ought to have been awarded a sum of Rs.1,00,000/- towards loss of consortium.

NEGLIGENCE:

4. On the issue of negligence, the Claims Tribunal referred to the testimony of PWs 4 and 5 and opined that the accident was caused on account of negligence of the insured vehicle. I have perused the Affidavit of Balwan Singh (PW4) and the testimony of Hosiar Singh (PW5). Both the witnesses were categorical that the truck bearing no.UHQ-857 was going ahead of the car bearing no.DL-2CZ-0074 and that the truck driver had applied the breaks suddenly without giving any indication as a result of which, the car collided in the rear portion of the truck. In cross-

examination, nothing substantial could be brought to rebut the testimonies of PWs 4 and 5. It may be noted that in a claim petition under Section 166 of the Motor Vehicle Act, 1988, negligence has to be proved on the touchstone of preponderance of probabilities. In view of the testimonies of PWs 4 and 5, negligence is amply proved.

COUNSEL'S FEE:

5. It is stated by the learned counsel for the Appellant that the Claims Tribunal was not justified in awarding a sum of Rs.75,000/- towards counsel's fee. At the same time, on the basis of judgment in *Rajbir Singh*(supra), Respondent no.1 was entitled to a sum of Rs.1,00,000/- towards loss of consortium as against a sum of Rs.10,000/-. In view of this, the sum of Rs.75,000/- awarded towards counsel's fee is set aside and this sum is awarded towards loss of consortium making it Rs.85,000/- .
6. The total compensation payable to Respondents/claimants thus, stands enhanced by Rs.75,000/-.
7. The compensation awarded by the Claims Tribunal shall be disbursed in terms of orders passed by the Claims Tribunal. The additional sum of Rs.75,000/- towards loss of consortium along with interest @ 7.5% from the date of filing of the petition shall be deposited by the Appellant within four weeks.

8. 50% of the compensation on deposit shall be released to Respondent no.1. Rest 50% shall be kept in Fixed Deposit for a period of two years.
9. The appeal is disposed of in above terms.
10. Pending applications, if any, also stand disposed of.
11. The statutory amount of Rs.25,000/- shall also be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

JANUARY 12, 2015
pst