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

Decided on: 25th May, 2015

\+ **MAC.APP. 816/2013**

IFFCO TOKIO GENERAL INSURANCE CO. LTD.
..... Appellant
Through: Mr.Harsh Vardhan, Advocate

versus

REEMA MEHTA & ORS.
..... Respondents
Through: None

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

JUDGMENT

G. P. MITTAL, J. (ORAL)

1. The appeal is for reduction of compensation of Rs.4,14,552/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondent no.1 for the death of Shri A.K. Mehta, father of Respondent no.1 who suffered fatal injuries in a motor vehicular accident which occurred on 14.11.2011.

2. The only ground of challenge laid by the Appellant Insurance Company is that Respondent no.1 was an unmarried daughter aged 30 years at the time of the accident. She got married after a couple of months. There was no evidence that she was financially dependent on the deceased and thus, Respondent no.1 was only entitled to compensation towards loss to estate and non-pecuniary damages. The Claims Tribunal erred in awarding compensation in her favour on account of loss of dependency.

3. During inquiry before the Claims Tribunal, it was claimed that the deceased was running a business in the name and style of Casmo International and earning Rs.30,000/- per month. Claimant Reema who examined herself as PW-1 did testify that her father was running a business in the name and style of Casmo International. She, however, could not place on record any document with regard to the deceased's income. But, a number of cash memos/bills Exs. PW-1/2 to PW-1/14(collectively) were placed on record.

4. Admittedly, the deceased was not being assessed to any Income

Tax. However, in the absence of any cross-examination that the deceased was doing business in the name and style of Casmo International and the documents in the shape of Exs. PW-1/2 to PW-1/14, it was established that the deceased was indeed carrying on business in the name of Casmo International. He used to sell Safety Posters. On a conservative basis, even I do not accept the deceased's income to be Rs.30,000/- per month. However, the Claims Tribunal ought not to have awarded the compensation on the basis of minimum wages of an unskilled worker. On a conservative estimate, I will take the income of the deceased from the business to be Rs.10,000/- per month.

5. Since Respondent no.1 was not financially dependent upon the deceased, she was only entitled to loss to estate. On the basis of the judgment of the Karnataka High Court in *A. Manavalagan v. A. Krishnamurthy & Ors.*, *2005 ACJ* 1992 and the judgment of this Court in *Keith Rowe v. Prashant Sagar & Ors.*, *MAC APP. No.601/2007,* decided on 15.01.2001, Respondent no.1 was entitled to only 1/3rd of the deceased's future income towards loss to estate. The deceased was aged 61 years. The

loss to estate will therefore, come to Rs.2,80,000/-(Rs.10,000/- x 1/3 x 12 x 7).

6. In addition, Respondent no.1 would be entitled to a sum of Rs.1,00,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses.

7. The overall compensation hence, comes to Rs.4,05,000/-. Thus, the award of Rs.4,14,552/- granted by the Claims Tribunal cannot be said to be excessive or exorbitant.

8. The appeal therefore, has to fail; the same is accordingly dismissed.

9. Pending applications also stand disposed of.

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

(G.P. MITTAL)
JUDGE

MAY 25, 2015
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