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

Decided on: 6th April, 2015

\+ **MAC.APP. 483/2012**

UNITED INDIA INSURANCE CO LTD ..... Appellant

Through: Mr. Rajesh Dwivedi, Adv. for Mr. A.K. De, Adv.

versus

SABITA VESHIN & ORS ..... Respondents

Through: Mr. Vinod Trisal, Adv.
Mr. Anand Nandan, Adv. with Mr. D.S. Mishra,Adv. for DTC.

\+ **MAC.APP. 1093/2012**

SABITA VESHIN & ORS. ..... Appellants

Through: Mr. Vinod Trisal, Adv.

versus

UNITED INDIA INSURANCE CO. LTD. ..... Respondents

Through: Mr. Rajesh Dwivedi, Adv. for Mr. A.K. De, Adv.
Mr. Anand Nandan, Adv. with Mr. D.S. Mishra,Adv. for DTC.

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These two appeals arise out of judgment dated 23.02.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of ₹ 47,47,400/- was awarded in favour of the legal

representatives of deceased Ajay Veshin, who suffered fatal injuries in a motor vehicular accident which occurred on 06.04.2009.

2. During inquiry before the Claims Tribunal, it was found that the accident was caused on account of rash and negligent driving of a bus bearing registration no.DL-1PB-2137 by its driver Vikas; the Claims Tribunal accepted the salary of the deceased to be ₹3,87,540/- per annum, added 30% towards future prospects, deducted 1/4 towards personal and living expenses and applied a multiplier of 14 (as per the age of the deceased) to compute the loss of dependency as ₹47,12,400/-.

3. For the sake of convenience, the Appellant in MAC.APP.483/2012 shall be referred to as the Insurance Company and the contesting Respondents, who were the Petitioners before the Claims Tribunal shall be referred to as the Claimants.

4. The following contentions are raised on behalf of the Insurance Company:-

(i) Negligence on the part of Respondent Vikas, driver of the insured bus bearing registration no.DL-1PB-2137 was not established, still the Appellant being an insurer was made liable to pay the compensation; and

(ii) There were number of allowances granted to deceased apart from the Basic pay of ₹15,200/- and House Rent Allowance of ₹4506/-, the same ought not to have been taken into consideration to compute the loss of dependency.

5. On the other hand, the learned counsel for the Claimants while supporting the impugned judgment urges that the compensation awarded towards non-pecuniary damages, *i.e.* towards loss of love and affection, loss of consortium and funeral expenses was on the lower side.

NEGLIGENCE

6. In order to prove negligence on the part of the DTC bus driver, the Claimants examined Ashish Kaul PW-2 whereas the DTC examined Vikas, its driver as R3W2. The main thrust of the argument on behalf of the learned counsel for the Insurance Company is that initially the deceased had informed his wife that the DTC bus driver was not at fault. This question was also raised before the Claims Tribunal and was dealt with by the Claims Tribunal holding that the deceased had also stated to his wife Smt. Sabita Veshin that the driver of the DTC bus was a govt. servant and it would be a question mark on his service (if a case is registered against him). The Claims Tribunal dealt with the issue of negligence in para 12 of the impugned judgment which is extracted hereunder:-

"12. The perusal of FIR shows that a cycle rider took a U-turn and the driver of the DTC Bus bearing no.DL1PB-2137 moved his vehicle towards deceased and scooter of the deceased fell down and the accident took place because of the negligence of the driver of the bus. ThePW-2 has clearly stated that Respondent no.2 was driving the offending vehicle at fast speed, rashly and negligently and hit the scooter of deceased. The testimony of PW-2 Sh. Ashish Kaul is reliable, trustworthy and consistent. Nothing contrary could be elicited during cross-examination of PW-2. The FOR, site-plan, postmortem report and the testimony of the PW-1 and PW-2, taken together fully establish the death of the deceased caused by the injuries sustained by him involving vehicle bearing registration No.DL-1PB-2137 in a road accident. There is nothing on record to dispel the inference that deceased Sh. Ajay Veshin, died on account of injuries sustained by him in a road accident which occurred on 06.04.2009 because of rash and negligent driving of vehicle bearing No.DL-1PB-2137 being driven by its driver……"

7. The Claims Tribunal analysed the evidence of the eye witness, the averments made in the FIR, the Site Plan and found that the testimony of the eye witness is fully corroborated from the Site Plan and thus, it held that the accident was caused on account of rash and negligent driving of the bus bearing registration no.DL-1PB-2137 by its driver.

8. It may be noted that in a Claim Petition under Section 166 of the Motor Vehicles Act, 1988, the negligence is required to be proved only on the touchstone of preponderance of probability and not beyond the shadow of all reasonable doubt. In my view, the culpable negligence was sufficiently established. I accordingly, affirm the

findings reached by the Claims Tribunal on the negligence.

QUANTUM OF COMPENSATION

9. It is well settled that all the allowances which enure for the benefit of the family of the deceased are to be taken into consideration to compute the loss of dependency. (See: *National Insurance Co. Ltd. v. Indira Srivastava & Ors., 2008 (2) SCC 763).*

10. The Claims Tribunal therefore, rightly included all allowances except the Performance Linked Allowance of ₹41,700/- per annum.

11. While dealing with the question of income of the deceased for the purpose of computation of loss of dependency and future prospects, in para 17 of the impugned judgment, the Claims Tribunal held as under:-

> *"17. I have gone through the material on record. The salary certificate issued by Voltas Ltd. shows that deceased was getting salary of ₹32,295/- per month. The said certificate has not been challenged by respondents nor any suggestion is given to PW-2 about the said salary certificate. Besides abovesaid amount, an amount of ₹ 41,700/- per year is shown towards performance linked award. There is n document on record to suggest the basis of grant of performance linked award. Neither there is any salary slip of any month nor certificate of any previous year to show how much amount towards performance linked award, was granted to the deceased in previous years. In the absence of any reliable material on record with regard to performance linked award, the same cannot be considered as part of salary. It has come in the testimony of PW-2 that the deceased was to get 10% increase and was to also get the promotion. From*

the testimony of PW-2, it is clear that deceased was a permanent employee therefore following the judgment "Smt. Sarla Verma & Ors. vs. DTC & Anr." passed by Hon'ble Supreme Court, 30% of salary amount is liable to be added towards future prospects."

12. Thus, the Claims Tribunal rightly added all allowances (which were for the benefit of the deceased's family), in the deceased income and added 30% towards future prospects as there was specific evidence that the deceased was to get 10% rise in his salary on promotion.

13. The Claims Tribunal awarded a compensation of ₹10,000/- each towards loss of love and affection, loss to estate and loss of consortium and further granted a sum of ₹5,000/- towards funeral expenses. In view of three Judge Bench decision of the Supreme Court judgment in *Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54,* the Claimants 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.

14. The overall compensation thus, comes to ₹49,47,400/-.

15. The compensation is thus enhanced by ₹2,00,000/- which shall carry interest @ 7.5% per annum from the date of filing of the petition till its payment.

16. The Insurance Company is directed to deposit the enhanced compensation along with proportionate interest within eight weeks.

17. 80% of the enhanced compensation shall enure for the benefit of Claimant no.1 and 20% for the benefit of Claimant no.5.

18. 50% of the enhanced compensation shall be held in Fixed Deposit for a period of one year. Rest shall be released on deposit.

19. The compensation awarded by the Claims Tribunal shall be released/held in Fixed Deposit in terms of the order passed by the Claims Tribunal.

20. Both the appeals are disposed of in above terms.

21. Pending applications also stand disposed of.

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

(G.P. MITTAL)
JUDGE

APRIL 06, 2015
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