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

**Date of Decision: 06.05.2016**

+ **MAC.APP. 22/2013**

**RELIANCE GENERAL INSURANCE CO. LTD.**

..... Appellant  
Through Mr. Sameer Nandwani, Adv.

versus

**RITU SINGH & ORS.**

..... Respondent

Through None

**CORAM:  
HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT**

**R.K.GAUBA, J (ORAL):**

1. Mr. Nirbhay Singh, aged about 33 years suffered injuries in a motor vehicular accident statedly involving motorcycle bearing registration No.DL 13 PF 5424 (motorcycle) driven by him and Tata tempo bearing registration No.DL 1LG 3777 (Tata tempo) on 30.08.2001 and died in the consequence. His dependent family members, first to fifth respondents (claimants), instituted an accident claim case (suit No.61/11) on 14.11.2011 seeking compensation under Section 166 of Motor Vehicles Act, 1988 (MV Act) impleading the sixth and seventh respondents, in addition to the appellant, as party respondents on the averment that they are the driver, owner and insurer respectively of Tata tempo with allegations that the accident had occurred due to negligent driving of the said vehicle. The tribunal held inquiry and, by judgment dated 27.09.2012, upheld the case of the claimants about death having occurred due to negligent driving of the offending vehicle. It,

thereafter, proceeded to assess the compensation to be awarded in the case and computed it at ₹42,04,000/- which was awarded with interest, the said amount inclusive of ₹41,39,000/- calculated as loss of dependency on the multiplier of 16 (rightly so chosen) after deduction of 1/5<sup>th</sup> towards personal & living expenses (again correctly so done) having found the annual income of the deceased (after deduction of income tax liability) to be in the sum of ₹2,48,700/- which was appreciated by addition of element of future prospects of increase to the extent of 30%. The insurer which had admitted its liability to indemnify was called upon to pay the compensation.

2. The insurer is in appeal questioning the impugned judgment of the tribunal on the ground that the finding with regard to negligence has been returned without evidence. It also questions the computation of compensation on the ground that the element of future prospects was wrongly added.

3. Having heard arguments on behalf of the appellant, this Court finds no substance in either of the above contentions.

4. Whilst it is true that the first claimant (Ritu Singh) appearing as PW1 spoke about the sequence of events, her information being sourced essentially from the report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) submitted after conclusion of investigation into the first information report (No.308/2011) of police station Sunlight Colony, no other witness with regard to mishap has been examined. But it cannot be ignored that even as per the said report under Section 173 Cr.P.C., no witness could be found at the spot by the local police. This, however, does not mean that the involvement of the Tata tempo in the accident or negligence about its driver cannot be proved. In a case arising out of liability in tort, the strict

rule of proof beyond all reasonable doubts does not apply. If the circumstances, attendant upon the mishap can be brought out otherwise than on eye-witness testimony, and if such circumstances reveal the preponderance of probability of negligence on the part of driver of one of the vehicles involved, finding on the issue of involvement and negligence can still be returned in such proceedings as at hand.

5. The report under Section 173 Cr.P.C. was proved by PW1 during her testimony. The genuineness of the said document and the narration of the facts and circumstances noted therein about the scene of accident was not challenged either during the testimony of PW1 or by way of any evidence in rebuttal. The said material clearly shows that the motorcycle and the Tata tempo had been found in an accidental state at the spot, the motorcycle having been hit by the other vehicle from behind. The driver of Tata tempo had abandoned the vehicle, having fled from the scene after the collision. Guilty conscience on his part is writ large in this conduct. The motorcycle rider having died, it fell on the shoulder of the Tata tempo driver to explain the circumstances in which his vehicle had ended up hitting against the motorcycle from rear side. The very fact that motorcycle was hit from behind, the onus to justify the collision shifted and was very heavily placed at the door of tempo driver. He not having been called into witness box even by the insurer, the finding returned by the tribunal cannot now be questioned.

6. On the issue of future prospects, all that needs to be noted here is the fact that the income of the deceased was proved with the help of income tax returns (ITRs) for the assessment years 2007-08, 2008-09 and 2009-10, each showing progressive rise from ₹1,30,050/- to ₹1,50,120/- to ₹2,49,150/-. With such irrefutable evidence available on record, the plea against future

prospects must be rejected.

7. In view of above, the appeal is dismissed.

8. The insurance company had been directed by order dated 09.01.2013 to deposit 80% of the awarded amount with accrued interest with UCO Bank, Delhi High Court branch which was further directed to release 50% to the claimants, keeping the balance in fixed deposit receipt. The Registrar General shall now take necessary steps to have the balance lying in deposit with the bank also released to the claimants in terms of the impugned judgment. The insurance company shall satisfy the rest of the award by requisite deposit with the tribunal within 30 days.

9. The statutory deposit, if made, shall be refunded after the award has been satisfied.

**MAY 06, 2016**  
VLD

**R.K. GAUBA**  
(JUDGE)

