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

Date of Decision: 20.05.2016

+ **MAC.APP. 1208/2012**

BAJAJ ALLIANZ GENERAL Appellant
Through Ms. Suman Bagga and Mr. Pankaj
Gupta, Advs.

versus

NARENDER SINGH & ORS. Respondent
Through Mr. N K Jha, Adv. for R-1 & 2
Mr. O P Mannie, Adv. for R-3 to 6

+ **MAC.APP. 245/2013**

MEENAKSHI RANI & ORS. Appellant
Through Mr. O P Mannie, Adv.

versus

NARENDER SINGH & ORS. Respondent
Through Ms. Suman Bagga and Mr. Pankaj
Gupta, Advs. for insurance

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 02.04.2010, Uday Chand, aged 34 years, employed as constable in Delhi Police was traveling as a passenger in car bearing No.DL 8CS 5774

(the car) driven by the first respondent at G T Road, Tiraha, Railway station, Police station Kotwali Chowki, Kirana Mandi, Ghaziabad, U.P. Sometime around 11.25 PM, there was a collision between the car and truck statedly bearing registration No.HR 38 1778 (the truck), in the consequence of which Uday Chand died. His dependent family members (parents), (appellants in MAC.APP.No.245/2013) instituted accident claim case (MAC petition No.239/10) on 21.05.2010 seeking compensation under Sections 140 & 166 of Motor Vehicles Act, 1988 (MV Act). In the said proceedings, Narender Singh (the car driver), Parmal Singh (the owner of the car) and Bajaj Allianz General Insurance Co. Ltd. (appellant in MAC.APP.No.1208/2012) were impleaded as party respondents, the latter (the insurer) concededly having issued an insurance policy covering third party risk in respect of the car for the period in question. The claimants founded their case on the averments that the accident had occurred due to rash driving of the car.

2. The tribunal held inquiry and, by judgment dated 31.08.2012, upheld the case of the claimants about the accident having occurred due to negligent driving of the car and thereupon awarded compensation in the total sum of ₹26,71,600/-. The insurer which was found liable to indemnify was asked by the tribunal to satisfy the award with interest at 7.5% per annum from the date of filing till realization.

3. The insurer, by its appeal (MAC.APP.No.1208/2012), has questioned the finding recorded by the tribunal about negligence on the part of the car driver. Its contention is that the story of negligence of the car driver has been fabricated as the first respondent while lodging the first information report (FIR) No.228/10 in police station Ghaziabad Kotwali (certified copy

at page 165 of the tribunal's record) had attributed negligence to the truck driver stating the said vehicle had come on the wrong side. It is the submission of the insurer in appeal that the tribunal fell into error by accepting the contrary version given by Mohan Pal (PW3), described as a vendor present at the scene of the occurrence.

4. *Per contra*, the claimants by their appeal (MAC.APP.No.245/2013) have submitted that in calculating the loss of dependency, the tribunal wrongly excluded ₹2,032/- receivable by the deceased as transport allowance on regular basis and further that the awards under the non-pecuniary heads of damages and rate of interest are inadequate. It is also their submission that though the tribunal added the element of future prospects, it factored in only 30% of prospective increase, ignoring the dictum in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 that the same should have been to the extent of 50%.

5. Having heard both sides, and upon perusal of the record, this Court finds that there is no good reason why the conclusion reached by the tribunal on the issue of negligence should be disturbed. It may be that in the FIR, the first respondent, the car driver, had stated facts attributing negligence solely to the truck driver. But, it has to be borne in mind that in a collision that seemingly was head-on with both vehicles coming from opposite directions, the conduct of both drivers was under scrutiny. Since the truck could not be found immediately at the spot, the version of car driver was available immediately to the police which adopted the same for purposes of registering the case. Merely because that was the version coming in the FIR,

it cannot become the conclusive proof. The tribunal has set out sound reasons for accepting the testimony of PW3. Though the site plan shows that the truck was in a wrong lane, given the time of the night when the accident occurred, it appears that truck was in the process of overtaking some other vehicle. Overtaking of other vehicles on road by itself may not indicate negligent driving. The need for overtaking may arise given the urgency of the journey undertaken and the volume of traffic on the road. But it must be added that the driver of a vehicle in making an effort to overtake must apply due caution and care about the safety of other road users. The tribunal has noted that the car driver would also have seen the oncoming truck in the wrong lane in the effort of overtaking and thus was also expected to apply caution and give way for which there was enough space on the left lane. The fact that the two vehicles collided against each other head-on itself is sufficient to infer that both drivers were negligent. Given this state of affairs, for purposes of claim on account of death of Uday Chand, the existence of contributory negligence on the part of the drivers of both the vehicles by itself is sufficient to reject the contention of the insurance company.

6. There is merit in the contention of the claimants that the amount of 2,032/- could not have been excluded. It was part of the regular emoluments earned by the deceased and would be resulting in corresponding savings and, thus, the net salary is recalculated as $(16,437 + 2,032)$ Rs.18,469/-. The annual income, thus, comes to $(18,469 \times 12)$ Rs.2,21,628/- from which the income tax liability of Rs.10,642/- is deducted, thereby giving the net income of $(2,21,628 - 10,642)$ Rs.2,10,986/-. Adding the element of 50%

future prospects and deducting $1/3^{\text{rd}}$ towards personal & living expenses, applying the multiplier of 16, the total dependency loss comes to $(2,10,986 \times 150 \div 100 \times 2 \div 3 \times 16)$ Rs.33,75,776/- rounded off to Rs.33,76,000/-.

7. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, compensation in the sum of Rs.1 lakh each on account of loss of love & affection and loss of consortium and Rs.25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case comes to $(33,76,000 + 2,50,000)$ Rs.36,26,000/-.

8. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*], the rate of interest is increased to 9% per annum from the date of filing of the petition till realization.

9. The award is modified accordingly.

10. It is noted that the tribunal had apportioned the award by specifying the amounts payable to the different claimants. By order dated 23.11.2012, (in MAC.APP.No.1208/2012) the insurance company had been directed to deposit 50% of the awarded amount with up-to-date interest, which was to be kept in fixed deposit receipt, but released to the claimants by order dated 22.04.2013. The insurance company is directed to now deposit the balance of its liability under the modified award with the tribunal within 30 days of this judgment making it available to be released to the claimants. Given the apportionment already granted in favour of other claimants, it is directed that the entire enhanced portion of the award including on account of

increase in the rate of interest shall fall to the share of the first claimant (Meenakshi Rani) (widow).

11. Statutory amount, if paid, by the insurance company shall be refunded.

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

(R.K. GAUBA)
JUDGE

MAY 20, 2016
VLD

