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

Date of Decision: 26.05.2016

\+ MAC.APP. 158/2013

ICICI LOMBARD GENERAL INSURANCE COMPANY LTD

..... Appellant

Through: Ms. Neerja Sachdeva, Adv.

versus

KRISHAN SINGH AND ORS ..... Respondents

Through: Mr. Amit Kr. Pandey, Adv. for R-1& 2.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The first and second respondents (claimants) had instituted an accident claim case (Suit No. 35/2010) on 27.05.2009 under Section 163 A of Motor Vehicles Act, 1988 (MV Act), to seek compensation on the structured formula basis on account of death of Sumit Sejwal in a motor vehicular accident that had occurred on 13.01.2009 involving negligent driving of truck bearing registration No. HR 47B 7257 (the offending vehicle), admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question.

2. The tribunal held inquiry and, on that basis, returned a finding that

death had occurred involving use of the offending vehicle. It proceeded to award compensation in the sum of Rs.4,99,000/- which includes Rs. 4,59,000/- towards loss of dependency, balance being under the non-pecuniary heads of damages.

3. The insurance company which has been burdened with the liability to pay assails the award mainly on the ground that non-pecuniary damages are not in accord with the second schedule to MV Act as would apply in a case under Section 163 A of MV Act**.** It also presses for recovery rights.

4. The learned counsel for the claimants fairly concedes to the above plea. Thus, the non-pecuniary damages are reduced to Rs. 9,500 only. In the consequence, the award is reduced to Rs. 4,68,500/-, rounded off to Rs. 4,69,000/-. Needless to add it shall carry interest as levied by the tribunal.

5. It is noted that the claim petition was filed by the parents of the deceased. The deceased was married and his widow was impleaded as third respondent. It is also noted that the tribunal had specified the amounts falling to the share of the parents in the sum of ₹ 1,50,000/- each and ₹ 1,99,000/- was given in the share of the wife.

6. By order dated 15th February, 2013, the insurance company had been directed to deposit the entire awarded amount with upto date interest from which 60% was allowed to be released to the claimants, the balance kept in fixed deposit receipt. Since the amount of compensation has been reduced, it is directed that the amounts already released to the parents (first and second respondents) shall be treated as their share in the compensation, the entire balance shall now go the fourth respondent (wife) alone. The Registrar General shall take necessary steps to release the balance amounts lying in deposit to the claimants in terms of the modified award, refunding

the excess with statutory deposit, if made, to the insurance company.

7. The insurance company had also pleaded before the tribunal that the driver of the offending vehicle was not holding a valid or effective driving licence. It appears it had led evidence by examining its Legal Manager (R1W1) to prove that steps had been taken to call upon the owner of the offending vehicle (third respondent herein) to produce the driving licence of the driver but there was no response. It is, however, noted that R1W1 himself deposed that the notice issued under Order 12 Rule 8 of Code of Civil Procedure, 1908 (CPC) had returned undelivered. The insurance company neither took any further steps nor led any evidence to prove absence of licence. In these circumstances, the view taken by the tribunal denying the insurance company's plea for exoneration or grant of recovery rights must be upheld.

8. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 26, 2016
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