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

Date of Decision: 25.05.2016

+ MAC.APP. 300/2007

UNITED INDIA INSURANCE CO. LTD Appellant

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

versus

GURCHARAN KAUR & ORS. Respondents

Through: Ms. Rupa Paul & Mr. H.L. Chumber,
Advs.

+ MAC.APP. 803/2011

GURCHARAN KAUR & ORS. Appellants

Through: Ms. Rupa Paul & Mr. H.L. Chumber,
Advs.

versus

UNITED INDIA INSURANCE CO. LTD Respondents

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

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Daljinder Singh, aged 45 years, was crossing the road in the area of police station Kavi Nagar, Ghaziabad at 7.45 p.m. on 27.10.1998 when he

was hit by motor vehicle described as Mini bus bearing registration No. DL IV 1773 (offending vehicle) and died in the consequence. The offending vehicle was insured against third party risk for the period in question with United India Insurance Company Ltd. (appellant in MAC Appeal No. 300/2007). The dependent family members of deceased Daljinder Singh (appellant in MAC Appeal No. 803/2011) instituted an accident claim case (Suit No. 333/2003) on 29.10.2001 impleaded the United India Insurance Company Ltd. (insurer) as one of the respondents, in addition to Sanjay Sapra (R1W1) and Satpal Singh as the other respondents, they concededly being the owner and driver respectively of the offending vehicle.

2. The tribunal held inquiry and on that basis passed judgment dated 12th March, 2007 upholding the case of the claimants that death of Daljinder Singh had occurred due to negligent driving of the offending vehicle. Thus, Satpal Singh (driver) was found to be the principal tort-feasor liable to pay compensation and Sanjay Sapra (owner) was held to be vicariously liable, the responsibility of both being joint and several.

3. The insurer had admitted that the offending vehicle was covered by third party risk insurance policy for the period in question but had raised the defence that the driver was not holding a valid or effective driving licence and it was entitled to avoid the liability to indemnify. Though evidence was led on this subject, including by the owner appearing as R1W1, the tribunal did not address the issue while deciding the case. The insurance company was directed to pay the compensation assessed in the sum of Rs. 33,77,472/- with interest @ 6% per annum from the date of institution till 28.02.2006, the benefit of interest for the remaining period having been denied on account of procrastinating approach of the claimant.

4. The insurer came up in appeal (MAC Appeal No. 300/2007) primarily raising the grievance that its plea about breach of terms and conditions of the insurance policy had not been addressed. It also challenged the quantum of compensation. The learned single Judge then seized of the matter, by order dated 10.04.2008, however, dismissed, the appeal as unmerited mainly taking note of the fact that defences of the driver and owner had not been taken over by the insurer as envisaged in Section 170 of Motor Vehicles Act, 1988 (MV Act).

5. After the appeal of the insurer had been dismissed by order dated 10.04.2008, it was brought to the notice of the Court that cross-appeal and cross-objections (CM No. 10433/2007) had also been filed and were lying pending. In terms of subsequent orders, the said cross-objections were treated as cross-appeal (MAC Appeal No. 803/2011) and the proceedings continued in such context.

6. By the said cross-appeal, the claimants have submitted that the assessment of compensation by the tribunal was not adequate inasmuch as, on account of death, the claimants had suffered 100% loss of income accruing to the deceased from agricultural lands and from transport business. It is also the submission of the claimants that the tribunal had ignored the fact that there was HUF property to which deceased was entitled and the income generated by the said HUF had not been included. The claimants further submit that the loss of dependency has been wrongly worked out on the multiplier of 14 whereas, having regard to his age, it should have been at a higher level. The claimants further also argue that the non-pecuniary damages awarded and the interest levied are unduly low.

7. While the cross-appeal of the claimants was pending, the insurer challenged the dismissal of its appeal by order dated 10.04.2008 before the Supreme Court by Special Leave to appeal (Civil) No. 12505/2008. The said petition was entertained by the Supreme Court by order dated 13.05.2008 and later referred to a larger bench. It was later turned into Civil Appeal (No. 869/2013), considered with a batch of other similarly placed cases and allowed by order dated 24.09.2013 whereby the order dated 10.04.2008 dismissing the appeal of the insurer was set aside and the matter remanded to this Court for re-consideration.

8. Thus, both these appeals have been taken together for fresh consideration.

9. Having heard both sides and having gone through the record, this Court finds no substance in the grievance of the claimant with regard to the calculation of loss of dependency. The tribunal considered the question of compensation, thus:-

23. Keeping in view that the income of the deceased largely accrued from fixed assets which continued to subsist in the hands of the claimants, I am inclined to place reliance on his income tax return EX.PW2/1 for the purpose of computing the compensation. These are for the financial year ending March 1997 and March 1998. The agricultural income has been reflected as Rs.7,24,180/- and Rs.7,80,160/- respectively for the two years. His other income is from interest on investments and from the transport business. The income for transport business is Rs.24,000/- for the year ending March' 98. While the income from interest remains unaffected by the death of the account holder, income from his transport business and agriculture could get affected to some extent given fact that his managerial/ supervisory skills would not be available. The deceased was not a farming hand himself and the entire produce was a result of his

supervisory skills only. The trucks were also not personally plied by him. PW3 had stated that the business of booking the truck was entrusted through him. Under such circumstances, the arguments advanced on behalf of petitioners that the entire income has come to a naught because of the death of deceased has no merit. The agricultural income for the year prior to his death is Rs.7,80,160/-. The annual income from the transport business was Rs.24,000/-. It would therefore be prudent to compute the loss of agricultural income and income from the transport business to the extent of being mitigating by 30% because of his death. 30% of the income from both these two sources amounts to Rs.2,41,248/- per annum. I am inclined to enhance this amount by ,50% keeping in view that the age of the deceased was around- 45 years and the scope of expansion, investment/reinvestment, rising cost of index have to be taken into consideration. The figure arrived at is Rs.3,61,872/-. Deducting 1/3rd towards personal expenses, the dependency of the petitioners is calculated at Rs.2,41,248/-. Applying a multiplier of 14, the petitioners are entitled to a compensation of Rs.33,77,472/-. In addition, the petitioners are further granted a sum of Rs.50,000/- towards loss of love and affection to the daughters and loss of consortium to the wife, and a sum of Rs.5000/- towards cremation charges”.

10. There is no reason why any income from HUF property should be included in the loss of dependency. Assumably, the rights under the HUF would have devolved upon the claimants in due course and, thus, there cannot be any loss of such account. The tribunal has taken an appropriate view in accepting 30% of the income from the agriculture and transport business as income which was generated by the claimants. Under the ordinarily law of inheritance, the agricultural lands and the transport business would have devolved upon the claimants. It is only the element of income which was generated from such assets which had to be taken into account. The choice of multiplier of 14 is appropriate, having regard to the

age of the deceased. The method of calculation of loss of dependency adopted by the tribunal, thus, cannot be faulted.

11. It is the submission of the insurer, however, that the element of future prospects of increase to the extent of 50% was inappropriate. This argument must be rejected in view of the fact that the tribunal took into account the income-tax returns (ITRs) for the financial years ending with March, 1997 and March, 1998. A comparison of the income declared in the said ITRs clearly provides the irrefutable evidence about progressive rise in the earnings. But, per *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, in view of the age of the deceased, the future prospects could not have been factored in beyond 30%. Thus, the loss of dependency is re-calculated as $(241248 \times 130 \div 100 \times 14 \times 2 \div 3)$ Rs. 29,27,142.4/- rounded off to Rs. 29,28,000/-.

12. It is, however, noted that the tribunal granted a composite sum of Rs. 50,000/- towards loss of love & affection and loss of consortium and only Rs. 5,000/- towards cremation charges with no award considered towards loss to estate. Having regard to the date of accident following the view taken by this Court in FAO 102/2001, *Madhu Marwaha & Anr. Vs. Dal Chand & Anr.* decided on 1st February, 2016, awards of Rs. 50,000/- each towards loss of love & affection and loss of consortium and Rs. 10,000/- each towards cremation charges and loss to estate are added. Thus, the total compensation in the case is worked out at $(29,28,000 + 1,20,000)$ Rs. 30,48,000/-.

13. The tribunal took a conscious decision in denying the benefit of interest for the period starting with date of institution till 28.02.2006 referring to the observations in the order dated 08.09.2006. While that view

may be correct in the facts and circumstances of the case, it is found that the rate of interest is unduly low. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*]. It is, however, made clear the benefit of the interest shall be available only for the period granted by the tribunal.

14. The award is modified accordingly.

15. Coming to the contention of the insurance company about breach of terms and conditions of the insurance policy, it is noted that the second respondent Satpal Singh, the driver (second respondent before the tribunal) did not join the proceedings. He was duly served but suffered the proceedings *ex-parte*. The insurance company took the plea that there was no valid or effective driving licence held. The owner Sanjay Sapra (first respondent before the tribunal) contested by examining himself as R1W1 to depose that the driver held a valid driving licence as he had checked the same at the time of engaging him. This claim, however, is just in the air. The owner of the vehicle was unable to produce a copy of the said driving licence.

16. In the above facts and circumstances, the contention of the insurer about breach should have been accepted. The availability of a driving licence valid and effective for the relevant date and in respect of the vehicle in question had to be proved by positive evidence either by the owner or driver. Since no such evidence was led, the contention of the insurance company is accepted. It is held that on account of breach of terms and conditions of the insurance policy, the insurer is entitled to recover the amount paid to the third parties, the claimants, in this case. For enforcing

this right, the insurer would be at liberty to take out appropriate proceedings before the tribunal.

17. By orders dated 21.05.2007 and 25.05.2007 (in MAC Appeal No. 300/2007), the insurance company had been directed to deposit Rs. 7.5 lakhs with accrued interest with the tribunal within the period specified which amount was allowed to be disbursed to the claimants as per the award. By order dated 29.08.2007, some amount from the portion put in fixed deposit receipt was allowed to be encashed prematurely. When the Special Leave Petition was entertained by the Supreme Court by order dated 13th May, 2008, the insurer was directed to deposit 50% of the awarded amount with the tribunal within four weeks thereof and the claimants were given liberty to withdraw the said amount upon furnishing solvent surety to the satisfaction of the tribunal. The insurer shall now be obliged to pay the balance of its liability in terms of the modified award by requisite deposit with the tribunal within 30 days of this judgment whereupon the same shall be released as per the apportionment directed by the tribunal.

18. The statutory deposit, if made by the insurance company, shall be refunded.

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

(R.K. GAUBA)
JUDGE

MAY 25, 2016
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