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

Date of Decision: 01st March, 2016

\+ **MAC.APP. 355/2007**

NATIONAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. Pradeep Gaur, Adv.

versus

SHARDA DEVI & ORS. ..... Respondents

Through: Mr. S. N. Parashar & Ms. Shelly, Advs.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The motor accident claims tribunal (the tribunal) by judgment dated 09.04.2007 decided the claim petition filed by the first to sixth respondents herein (the claimants) on 10.11.2005 (registered as suit no.586/2005) awarding compensation in the sum of ₹7,40,000/- with interest at the rate of eight percent (8%) per annum, under Section 163-A of the Motor Vehicles Act, 1988 (the MV Act) on account of death of Banarsi Mahto in a motor vehicular accident that had occurred at about 10:00 PM on 14.11.2004 involving Maruti van which could not be identified and three wheeler scooter bearing registration no.DL-1RG-5388 (TSR) driven by the deceased.

2. The insurance company has come up in appeal admitting that the TSR was insured with it against third party risk for the period in question but

stating that in the given set of facts and circumstances of claim under Section 163-A of the MV Act could not have been maintained and that claimants could at best seek compensation in terms of the Employee's Compensation Act, 1923. At the hearing, the learned counsel for the claimants fairly conceded to the objection raised by the insurance company and submitted that he would be satisfied if the claim is decided in terms of the Employee's Compensation Act, 1923.

3. It is conceded by both sides that the evidence shows that the deceased was 39 years old on the date of the accident and that in absence of better material his income has been correctly notionally assessed at ₹3342.90 which was the rate of minimum wages payable to a matriculate at the time in question. The compensation in terms of the Section 4 of the Employee's Compensation Act, 1923, thus, has to be calculated by treating fifty percent (50%) of the said income as the loss multiplied by the relevant factor of 207.98 as specified in the fourth schedule appended to the said Act. The total compensation in terms of the Employee's Compensation Act, 1923, thus, is calculated as (3342.90x50÷100x207.98) ₹3,47,628/-, rounded off to ₹3,48,000/-.

4. The learned counsel for the claimants fairly conceded that compensation payable under the Employee's Compensation Act, 1923 cannot carry any other heads of damages.

5. Thus, a consent order is passed. The compensation is reduced to ₹3,48,000/-. It shall, however, carry interest at the rate of nine percent (9%) from the date of filing of the petition till realization.

6. The award is modified. The tribunal has specified the amounts falling to the shares of the six claimants. Since the compensation has been reduced, the said direction needs to be suitably modified. It is directed that the fifty percent (50%) of the awarded compensation shall fall to the share of first claimant (first respondent), the balance to be apportioned equally amongst other claimants with proportionate interest. It is, however, made clear that the liberty granted to the insurance company to recover the amount paid under these directions from the seventh respondent Dinesh Kumar (second respondent before the tribunal) is not being disturbed.

7. The enforcement of the impugned award was stayed by this court by order dated 31.05.2007. The stay is now vacated. The insurance company is directed to deposit the amount payable in terms of the award modified as above with the tribunal within 30 days of this order whereupon the amount shall be released to the claimants.

8. The statutory deposit, if made, shall be refunded.

9. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 01, 2016
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