$~R-144 & R-145

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

Date of Decision: 02.06.2016

\+ **MAC.APP. 142/2008 & CM No.3302/2008**

NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through Mr. D K Sharma, Adv.

versus

SUMITA & ORS. ..... Respondents
Through Mr. O P Mannie, Adv.

\+ **MAC.APP. 18/2009**

SUMITA ..... Appellant
Through Mr. O P Mannie, Adv.

versus

RAVINDER SINGH & ORS. ..... Respondents
Through Mr. D K Sharma, Adv. for R-3

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Sumit, 19 year old, a bachelor, was travelling on the pillion of two wheeler motorcycle bearing registration No.DL7S W 3797 of Richpal Singh (R3W1) which was driven by Ravinder Singh (the driver) with one more pillion rider on 04.06.2005. The motorcycle struck against the side pavement at main road Triveni Apartment, Vivek Vihar, New Delhi on account of negligent driving by Ravinder Singh (driver) resulting in all the

three persons riding it falling down. All these persons travelling on the motorcycle were without helmets. Sumit suffered head injuries and came to be hospitalized for treatment, in spite of which he died in the consequence on 09.06.2005. His mother Sumita (appellant in MAC.APP.No.18/2009) instituted an accident claim case (petition No.259/2005) on 04.07.2005 under Sections 166 & 140 of Motor Vehicles Act, 1988 (MV Act) impleading Ravinder Singh (driver), Richpal Singh (owner) and New India Assurance Co. Ltd. (insurer) of the said motorcycle as respondents with the averments that the accident had occurred due to negligent driving of the motorcycle. The motor accident claims tribunal (tribunal) held inquiry and, on that basis, by judgment dated 28.11.2007, returned a finding accepting the case of the claimant mother that Sumit had died due to negligent driving of the motorcycle. This finding has attained finality as it was not further challenged.

2. The tribunal awarded compensation in the sum of ₹4,62,400/- and directed the insurer (appellant in MAC.APP.No.142/2008) to pay, it having admittedly issued a third party insurance policy in respect of the motorcycle. The said amount was inclusive of ₹4,22,400/- towards loss of dependency, besides ₹10,000/- towards medical expenses and ₹30,000/- as composite sum on account of loss of estate, funeral expenses and transportation charges etc.

3. The insurer by its appeal (MAC.APP.No.142/2008) submitted that the claimant mother appearing in the evidence (as PW1) had admitted that Sumit was a son born to her from her first marriage. Her husband having died, Sumit had initially lived with his maternal grandmother (nani) for two

to three years, she having remarried in 1998 and having given birth to another son from the said second marriage. The contention of the insurance company is that in these circumstances, the claim of loss of dependency was questionable. The insurer further refers to the evidence of Uchit Sahni (PW2) and Richpal Singh (R3W1), which collectively reveal that the motorcycle was carrying three persons unauthorisedly, it having been admittedly borrowed from its owner (Richpal Singh) by his son (Ravinder Singh) with his consent and further that all the persons riding it were not wearing any helmet. The contention raised by the insurer is that these facts and circumstances reveal negligence on the part of the driver and since the owner had not only permitted his son to carry two pillion riders but also all occupants who were not wearing helmets, there was a breach of terms and conditions of the policy as the vehicle had been put to use on public road against the provisions of MV Act. On this reasoning, the insurer seeks recovery rights against the owner of the insured vehicle. The insurer further submits that since the deceased was a bachelor, personal & living expenses should have been deducted to the extent of one-half (50%).

4. *Per contra*, the claimant by her appeal (MAC.APP.No.18/2009) submits that the evidence clearly shows that after her remarriage, the son had come to live with her and since he had been gainfully employed, he was contributing to the household expenditure. She also argues through her counsel that the dependency loss has not been properly calculated as the award under the non-pecuniary heads of damages and the rate of interest (7.5% per annum) are on the lower side.

5. The argument of the insurance company about there being no loss of dependency must be rejected. The claimant appearing as PW1 clearly

deposed that though, after her remarriage in 1998, the deceased had initially shifted to the house of his maternal grandmother, he had come back to the house, living with her and the second husband and that he would also contribute to the family expenditure.

6. Having heard the learned counsel on both sides and having gone through the tribunal's record, this Court agree with the submission of the insurer with regard to the deduction on account of personal & living expenses. Since the deceased was a bachelor, this factor had to be brought in to the extent of 50%. The loss of dependency is, thus, re-calculated as (3,300 ÷ 2 x 12 x 16) ₹3,16,800/-.

7. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, compensation in the sum of ₹1 lakh on account of loss of love & affection and ₹25,000/- each towards loss of estate and funeral expense are added besides ₹10,000/- awarded by the tribunal towards medical expenses. Thus, the total compensation payable in the case is computed as (3,16,800 + 1,50,000 + 10,000) ₹4,76,800/-.

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 contention of the insurer about breach of terms and conditions of the insurance policy leading to recovery rights being granted against the insured, however, cannot be accepted. It may be that the insured (R3W1) had given the motorcycle for use to his son but there is nothing on record

from which it could be inferred that he was aware that his son would be carrying more than one person along on the pillion and further that all of them would not be taking proper care in wearing helmets as was required under the law. The contention of the insurer is thus rejected.

10. By order dated 04.03.2008, in MAC.APP.No.142/2008, the insurer was directed to deposit the entire awarded amount with Registrar General within the period specified and out of such deposit 75% was allowed to be released. The Registrar General shall now calculate the amount payable under modified award and release the same to the claimant from the balance, refunding the excess, if any, to the insurer with statutory deposit, if made. Conversely, if the amount deposited is deficient, the insurer will be obliged to pay the balance by requisite deposit with the tribunal within 30 days making it available to be released.

11. Both appeals are disposed of in above terms.

(R.K. GAUBA)
JUDGE

JUNE 02, 2016
VLD