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

Date of Decision: 8th February, 2016

+ **MAC.APP.316/2011**

TATA AIG GENERAL INSURANCE CO LTD Appellant
Through Mr. Arbaaz Hussain, Adv. for
Ms. Shantha Devi Raman, Adv.
versus

SUSHILA DEVI & ORS Respondent
Through Mr. S N Parashar, Adv. for R-1

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On the claim petition under sections 140 and 166 of Motor Vehicles Act, 1988 (MV Act) presented by first to fifth respondents herein, registered as MACT claim case No.326/2008, the Motor Accident Claims Tribunal (the Tribunal) awarded compensation in the sum of ₹11,01,000/- with interest at 9% per annum from the date of filing of the petition (03.06.08) till realisation on account of death of Brahm Prakash in motor vehicular accident that occurred on 30.04.2008 at about 12.30 PM on national highway No.8 IMT, Manesar, Haryana, involving collision between Maruti van bearing registration No.DL 3N 2811 (Maruti van) and truck bearing registration No.HR-55/E-8580 (the offending vehicle), The Maruti van was concededly driven by Sandeep @ Sonu son of deceased Brahm Prakash. In the said accident Sandeep @ Sonu also died. In the claim petition, the driver and owner were

impleaded as first two respondents, they being sixth and seventh respondents in this appeal. The appellant insurance company was shown in the array as party respondent before the Tribunal. It has come in appeal under Section 173 of MV Act questioning the computation of the compensation as also raising the issue of no benefit having been accorded on account of contributory negligence on the part of Sandeep @ Sonu, the driver of the Maruti van.

2. The learned counsel for the appellant referred to paras 39 and 40 of the impugned judgment in the context of plea of contributory negligence. The narration in the said paragraphs of the impugned judgment run thus :

“39. Petitioners however, in addition to placing on record the certified copies of criminal proceedings had examined the eye witness Sh.Pradeep Kumar. This witness had narrated the sequence of events as perceived by him at the time of accident. He categorically deposed that on their way to Delhi from Rajasthan, when their Maruti Van reached at National Highway No.8, IMT Chowk, Manesar, Gurgaon, the offending vehicle ie. Dumper was going ahead of their vehicle being driven by its driver in a zig-zag manner. He deposed that his brother namely Sandeep who was driving the Maruti Van, intended to overtake the same and gave the signal. He deposed that when his brother was in the process of overtaking the offending vehicle, the driver of the said vehicle suddenly took a right turn without any signal and struck against their Maruti Van with great force, which resulted in this accident.

40. On being cross examined, this witness maintained the stand that the accident resulted due to negligence of respondent no.1, who was driving his truck at a fast speed.”

3. It is the contention of the insurance company that since the evidence showed that the accident had occurred while the Maruti van was in the process of overtaking, the finding should have been returned to the effect that there was contributory negligence on the part of the driver of the Maruti van.

4. Having heard the learned counsel and perused the record, it is found that the contention is misplaced. Merely because the Maruti van driver was in the process of overtaking, it does not mean negligence has to be attributed to him as well. The evidence clearly showed that the collision occurred because the truck driver had suddenly changed the lane. The finding of negligence on his part, thus, has been correctly recorded.

5. The insurance company submits that the Tribunal has wrongly added the element of future prospects while calculating the loss of dependency. It refers to *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 and *Reshma Kumari & Ors. Vs. Madan Mohan & Anr.*, (2013) 9 SCC 65.

6. In the present case, however, the evidence shows that the deceased Brahm Prakash was neither a self-employed person nor engaged in service at a fixed salary. His employer Deepak Behl (PW-4) proved on the strength of his affidavit Ex.PW-4/1 and salary/wages record [Ex.PW.4/A to EX.PW.4/C (C1, C2 and C3)] that the deceased was engaged as a security guard for the preceding 18 months, his last salary being ₹3,633/-. Only because the said salary is equivalent to minimum wages, it does not mean that his income has been assessed on

notional basis or that he is to be treated as a person engaged on fixed salary. Thus, the addition of future prospects cannot be faulted.

7. The Tribunal, however, wrongly added ₹2,384/- in the loss of dependency, the said amount representing the pension received by the widow (first respondent herein) which she conceded was the family pension, she was receiving after the death of Brahm Prakash, on account of his past government service. No proof was adduced to show on record as to what was the pension received by Brahm Prakash during his lifetime. Be that as it may, the element of ₹2,384/- representing the family pension which the widows continues to receive, there is no loss to that effect.

8. Thus, the computation needs to be recalculated to the extent it concerns loss of dependency. On the monthly loss of ₹5,550/-, the multiplier of 13 was adopted since the age of deceased was 46 years. In this view, the total loss of dependency comes to $(5,550 \times 12 \times 13)$ ₹8,65,800/- rounded off to ₹8,66,000/-. Non-pecuniary damages in the total sum of ₹1,55,000/- are added and, thus, the total compensation payable in the case is computed at ₹10,20,800/-.

9. The award is accordingly modified. The compensation payable on account of death of Brahm Prakash is reduced to ₹10,20,800/-. It shall carry interest as levied by the Tribunal.

10. The Tribunal had apportioned the compensation amongst the claimants by specifying the amounts. Since the compensation has been reduced, the shares of the claimants shall stand reduced proportionately.

11. By order dated 06.05.2011, the insurance company had been directed to deposit the entire award with up-to-date interest out of which

50% was allowed to be released. The Registrar General shall recalculate the amount payable to the claimants in terms of the award modified as above and release the balance, if any, to the claimants and if claimants have received excess, they shall return the same to the insurance company. If it be so required, the insurance company may approach the tribunal for assistance in recovery in accordance with law. The excess in deposit shall be refunded to the appellant.

12. The appeal is disposed of in above terms.

13. Statutory deposit, if made, shall be refunded.

R.K. GAUBA
(JUDGE)

FEBRUARY 08, 2016
VLD