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

Date of Decision: 23rd March, 2016

\+ **MAC.APP. 370/2012**

NEW INDIA ASSURANCE CO LTD ..... Appellant

Through: Mr. P. Acharya, Adv. proxy counsel for Mr. K. L. Nandwani, Adv.

versus

SMT USHA & ORS ..... Respondents

Through: Mr. Giriraj Singh, Adv. for R-1.
Mr. Manish Mani & Ms. Hreeshika Bhargav, Adv. for R-2.

AND

\+ **MAC.APP. 865/2015**

MELA WATI ..... Appellant

Through: Mr. Manish Maini & Ms. Hreeshika Bhargav, Adv.

versus

NEW INDIA ASSURANCE CO LTD & ORS ..... Respondents

Through: Mr. P. Acharya, Adv. proxy counsel for Mr. K. L.Nandwani, Adv. for R-1.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 11.08.2010, at about 11:30 PM in the area of Jahangirpuri, a motor vehicular accident occurred involving vehicle described as UP-21N-0210

(the offending vehicle) which was admittedly insured against third party risk with New India Assurance Co. Ltd. (appellant in MAC appeal no.370/2012). The accident resulted in death of Sunil @ Jailor, son of late Nanak Chand, resident of E-817, Jahangirpuri, Delhi, then aged 22 years. A detailed accident report (DAR) was filed by the station house officer (SHO) of police station Mahendra Park which had registered as first information report (FIR) no.184/2010 for offences punishable under Sections 279/304-A of Indian Penal Code, 1860 (IPC). The said DAR, presented on 12.10.2010, was registered and treated as the claim petition under Section 166 of Motor Vehicles Act, 1988 (the MV Act).

2. As per the DAR, the deceased was survived by his mother Usha and eight years old sister Karina. The tribunal issued notice to the insurance company by order dated 12.10.2010. The insurer filed objections regarding particulars of Smt. Usha. The tribunal directed the investigating police officer to enquire and submit a report. It may be added that the insurance company had also submitted a legal offer to pay compensation in the sum of ₹4,58,352/-.

3. During further inquiry by the tribunal, it emerged that Nanak Chand, father of Sunil @ Jailor (the deceased) had died on 18.05.1997 and Usha, the mother of the deceased thereafter had remarried with one Raj Kumar and given birth to three children from the said wedlock. It appears that on 22.05.1998 a compromise had been entered upon by Usha (mother), Jasbir Singh (maternal grandfather) and Melawati (paternal grandmother whereunder the deceased, then an infant, had been given under the care and custody of both of them (maternal grandfather and paternal grandmother),

the mother having agreed to relinquish all her rights qua him, in the event of she remarrying.

4. The tribunal awarded compensation in the sum of ₹7,02,800/- apportioning it amongst Usha (mother) and Melawati (grandmother) in the sum of ₹4,52,800/- and ₹2,50,000/- respectively.

5. The insurer which had been called upon to pay the compensation preferred appeal (MAC appeal no.370/2012) raising a number of contentions. During the pendency of the said appeal, Melawati (grandmother of the deceased) filed cross-objections (CM no.22125/2015), *inter-alia*, submitting that the share in the compensation granted to her was neither just, nor fair, nor reasonable, also pointing out that there was no interest levied. The said cross-objections have been treated as independent appeal (MAC appeal no.865/2015).

6. When these appeals were taken up for hearing, the learned counsel for insurance company submitted that he has received instructions that the appeal of the insurer (MAC appeal no.370/2012) is to be withdrawn. The said appeal is, thus, dismissed as withdrawn.

7. Having heard the learned counsel on the cross appeal, it is found that the grievances about non-levy of interest on the awarded compensation is correct. The DAR had been treated as claim petition on 12.10.2010. The award was passed on 09.01.2012. In these circumstances, it is directed that the insurer shall pay interest at the rate of nine percent (9%) from the date of registration of DAR as the claim petition till the date of deposit of the awarded compensation.

8. On the issue of apportionment, the learned counsel representing the mother (Usha) and the grandmother (Melawati) jointly submitted that both sides are agreeable if the compensation awarded is apportioned equally amongst them. This, in given factual matrix being fair, the joint request is accepted. The directions in the impugned judgment are modified. The compensation awarded shall stand apportioned equally amongst the mother (Usha) and grandmother (Melawati).

9. By order dated 11.04.2012, the insurer had been called upon to deposit the entire awarded amount with up-to-date interest with the Registrar General, which was directed to be kept in fixed deposit receipt with UCO Bank, Delhi High Court branch for a period of six months, to be renewed from time to time. The Registrar General is directed to release the said deposited amount with accrued interest in equal shares to Usha (mother) and Melawati (grandmother). Since as a result of levy of interest, the insurer shall be obliged to pay more amount of money, it is directed that it shall deposit the same with the tribunal within 30 days, whereupon the same shall also be released equally amongst the two - above mentioned family members of the deceased.

10. The statutory deposit, if made, by the insurer, shall be refunded.

11. Both these appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 23, 2016
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