$~20

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

Date of Decision: 19.05.2016

\+ **MAC.APP. 432/2014 & CM No.8184/2014**

SBI GENERAL INSURANCE CO LTD

..... Appellant

Through Mr. Aman Shanker, Adv.

versus

SOHAN LAL & ANR

..... Respondent

Through None

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Karamveer, a bachelor, working as an Assistant Professor in Atma Ram Sanatan Dharma College, New Delhi died in a motor vehicular accident that occurred on 08.06.2013 involving negligent driving of motor vehicle bearing registration No.RJ 11 GA 5680 (the offending vehicle). His parents, first and second respondents (claimants), instituted an accident claim case (suit No. 443/13) on 26.08.2013 seeking compensation. Upon inquiry, by judgment dated 09.01.2014, the motor accident claims tribunal (tribunal) upheld the case about negligent driving having led to the death. The compensation in the sum of ₹37,64,538/- was computed and directed to be paid by the appellant insurance company (insurer) with interest at 9% per annum from the date of filing of the petition.

2. The insurer, though admitting its liability to indemnify, has come in appeal questioning the computation of the compensation. It is argued that the tribunal wrongly calculated the loss of dependency on the basis of salary certificate dated 02.07.2013 (page 127 of the tribunal's record) as arrears to the extent of ₹883/- on account of transport allowance were not deducted. It is further pointed out that for calculating the net income the income tax liability also had to be properly calculated and thereafter deducted. Further, it is argued that the tribunal wrongly chose the multiplier of 11 on the basis of age only of the mother, ignoring the fact that the claim was on behalf of both the parents. It is pointed out from the record that the date of birth of the father was 18.03.1954 and second respondent (mother) was four years younger to him. The counsel submits on the average age of 56 years of both the parents, the proper multiplier to be applied was 9.

3. The submission of the counsel for the insurer with regard to the need for deduction of arrears also of transport allowance (including what was noticed by the tribunal in the impugned judgment) besides the amount payable as income tax is correct. Thus, deducting Rs.883/- on account of transport arrears, in addition to Rs.3,135/- and Rs.5,964/- paid as arrears on account of HRA and DA respectively, the net income of the deceased comes to Rs.36,279. The annual income would, thus, stand calculated at (36,279 x 12) Rs.4,35,348/-. Having regard to the rate of income tax for the corresponding financial year 2013-14, the income upto Rs.2 lakh being exempt, the income tax liability works out to Rs.23,535/-. The net income, thus, comes to (4,35,348 – 23,535) Rs.4,11,813/-.

4. Adding the element of future prospects to the extent of 50% (inasmuch as the deceased was a regular employee where there would be progressive rise in income), and upon deduction of 50% towards personal and living expenses, applying the multiplier of 9, the loss of dependency comes to (4,11813 x 150 ÷ 100 ÷ 2 x 9) Rs.27,79,738/- rounded off to Rs.27,80,000/-.

5. It is noted that the non-pecuniary damages awarded by the tribunal are inadequate. The accident had occurred in June, 2013. Following the view taken by this Court in MAC.APP.No.160/2015 *Shriram General Insurance Co Ltd v. Usha* decided on 05.05.2016, non-pecuniary damages in the sum of ₹1,50,000/- towards loss of love & affection and ₹50,000/- each towards funeral expenses and loss to estate are added. Thus, the total compensation is computed as (27,80,000 + 1,50,000 + 50,000 + 50,000) ₹30,30,000/-.

6. The award is modified accordingly. Needless to add, it shall carry interest as levied by the tribunal.

7. The tribunal had apportioned the award amongst the first and second respondents in the ratio of 25% and 75% respectively. It had also directed one-half of their shares to be put in fixed deposit receipt for a period of six years.

8. By order dated 09.05.2014, the insurance company was directed to deposit the entire awarded amount with interest within the period specified from which 95% was allowed to be released, the balance be kept in fixed deposit receipt with UCO Bank, Delhi High Court branch. Admittedly, more than due would have been released to the claimants in terms of the said

interim order. However, since the one-half of the said amount thus released, would still be lying in the fixed deposit receipt, the Registrar General shall take suitable steps to not only recalculate the amounts payable to the claimants under the modified award but also retrieve what has been received in excess and refund the balance to the insurer.

9. Statutory amount, if deposited, shall be refunded.

10. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 19, 2016
VLD