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

Date of Decision:17th March, 2016

\+ **MACAPP. 251/2013**

UNITED INDIA INSURANCE CO LTD …Appellant

Through: Ms. Suman Bagga & Mr. Pankaj Gupta, Advs.

Versus

VEENA DEVI AND ORS. ….Respondents

Through: Mr. Anshuman Bal, Adv. for R-1 to 3. Mr. Gurcharan Singh, Adv. for R-5 with respondent no.5.

AND

\+ **MACAPP. 252/2013**

RATTAN SINGH ….Appellant

Through: Mr. Gurcharan Singh, Adv. with appellant in person.

versus

VEENA DEVI & ORS. …Respondents

Through: Ms. Suman Bagga & Mr. Pankaj Gupta, Advs. for respondent no.5

AND

\+ **MACAPP. 431/2013**

ARJUN …..Appellant

Through: Mr. Ankit Guma, Adv.

Versus

UNITED INDIA INSURANCE CO. LTD. &ORS. … Respondents

Through: Ms. Suman Bagga & Mr. Pankaj Gupta, Advs. for R-1.
Mr. Gurcharan Singh, Adv. with respondent no.2 in person.

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

JUDGMENT

1. These three appeals are directed against the judgment dated 15.12.2012 of motor accident claims tribunal (the tribunal) in an accident claim case registered as suit no. 132/2010 and, therefore, have been taken up and heard together and are being decided through this common judgment.

2. On 19.02.2010, a motor vehicular accident had occurred in front of metro workshop Mundka, Nangloi, Delhi involving a motorcycle bearing registration no.HR-12H-3244 (the motorcycle) and a cyclist (Vijay Dass). The motorcycle was admittedly driven by Aijun-(appellant in MAC appeal no.431/2013). Vijay Dass, then aged 35 years, earning his livelihood as security guard was the bicycle rider who suffered injuries and died in the consequence. The police registered a first information report (FIR) no.56/2010 in police station Nangloi, its copy having been submitted on record (at page no.l35 of the paper book in MAC appeal no.252/2013).

3. The wife and son of Vijay Dass (the claimants), first and second respondent in MAC appeal no.252/2013 brought a claim petition before the tribunal on 12.03.2010 seeking compensation under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act), impleading the motorcycle rider Arjun (appellant in MAC appeal no.431/2013) and the registered owner of the motorcycle Rattan Singh (appellant in MAC appeal no.252/2013) and United India Insurance Co. Ltd. (appellant inMAC appeal no.251/2013) as respondents. It appears that the petition also mentioned that the deceased was survived by mother Kapoorva Devi who was impleaded as proforma respondent in the claim case.

4. On the basis of evidence adduced, the tribunal awarded compensation in the sum of ₹ 15,90,500/- with interest at the rate of seven & half (7.5%) percent from the date of filing of petition till realization in favour of the claimants. The said amount included ₹ 15,55,200/- calculated as loss of dependency on the basis of assessment about income in the sum of ₹ 6,000/- from which 10% was deducted on account of personal and living expenses and the element of 50% of increase by way of future prospects was added. The tribunal also awarded ₹ 25,000/- towards loss of love & affection and ₹ 10,000/- towards funeral expenses.

5. The registered owner of the motorcycle had, inter-alia, taken the plea that he had sold the motorcycle to one Dharmender, (who appeared during the inquiry before the tribunal as R1W2 for and on behalf of motorcycle rider Arjun) prior to the date of the accident. The insurance company, on the other hand, took the plea that the motorcycle rider Arjun was not holding a valid or effective driving license and, thus, there was a breach of terms and

conditions of insurance policy. During the inquiry, Arjun also appeared as witness (RlWl) on the basis of his own affidavit (Ex.RlWl/A). In the course of his deposition, he having admitted that he was holding a learner license on the date of the accident, though taking the position that he was accompanied by Dharmedner, riding pillion at the time of accident. Dharmender (R1W2), in turn, supported him in this regard, adding that he himself was holding a valid driving license (mark RlWl/X).

6. It may be mentioned here that the fact that the driving license held by Arjun, motorcycle rider was a learned license and the fact that Dharmender (R1W2) possesses a valid driving license on the date of accident are facts which have remained unchallenged.

7. The tribunal, however, rejected the contentions of Arjun and Rattan Singh, the driver and registered owner respectively of the motorcycle referring in this context to the pleadings wherein there was no mention about there being any pillion rider at the relevant point of time. On this basis, the plea of the insurance company about breach of terms and conditions of the insurance policy was accepted and though it was directed to pay compensation under third party insurance policy, it was granted rights to recover the amount from the driver and the registered owner of the motorcycle, held jointly and severally liable.

8. The insurance company has come up in appeal questioning the award particularly under the head of loss of dependency, taking exception to deduction only to the extent of 10% towards personal and living expenses and addition of the element of future prospects.

9. It may be added here that during hearing the claimants, who undoubtedly have not filed any independent appeal raised grievances about low award under the non-pecuniary heads of damages and the rate of interest. The objection of the insurance company that there is no appeal by the claimants, cannot be accepted as it is the duty of this court to bring in correction if it is found that the compensation awarded is not just or proper.

10. On consideration of the submissions of the insurance company, it is found that the objection raised with regard to the deduction towards personal and living expenses only to the extent of 10% and addition of future prospects are correct. Following the law laid down in *Sarla Verma* (Smt.) & *Ors. V. Delhi Transport Corporation & Anr., (2009) 6 SCC 121* as affirmed in *Reshma Kumari V. Madan Mohan (2013) 9 SCC 65*, the deduction will have to be made to the extent of one third. Since the deceased was earning ₹ 6,000/-, the loss of dependency is calculated at ₹ 4,000/- per month. Following the dictum in *Sarla Verma* (supra) and *Reshma Kumari* (supra), there is no possibility of any future prospects being added in as much as the evidence would not show any progressive rise in income. On the multiplier of 16, rightly adopted by the tribunal, the total loss of dependency is calculated as (4,000x12x16) ₹ 7,68,000/-.

11. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54* and *Shashikala V. Gangalakshmamma (2015) 9 SCC 150,* the non-pecuniary damages in the sum of ₹ 1,00,000 each on account of loss of consortium and ₹ 25,000/- each towards funeral expense and loss of estate are added. Thus, the total compensation payable comes to (7,68,000+2,50,000) ₹ 10,18,000/-.

12. The compensation is reduced ₹ 10,18,000/-. Following the consistent view taken by this court, interest at the rate of nine percent (9%) per annum from the date of filing of the petition till realization shall be levied, (see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd V. Sangeeta Devi & Ors.*).

13. The grievances raised by Arjun and Rattan Singh in their respective appeals are essentially that the finding about the breach of terms and conditions of the insurance policy is perverse. It is their submission that in proceedings relating to the accident claim case, strict rules of pleadings should not have been enforced. It is pointed out that the FIR, copy of which was available on record itself mentioned that two persons had been injured in the accident, one being Vijay Dass, the deceased on which account the claim case was filed and the other being Dharmender (R1W2) reference to he also having been taken to hospital with serious injuries was made at the very inception. Indeed, the tribunal could not have ignored these facts so as to disbelieve the claim of R1W1 and R1W2 about Dharmender being the pillion rider with Arjun on the motorcycle at the time of accident.

14. It may be that Arjun was holding learner license. But the facts remains that he was accompanied and assisted by Dharmender who was holding a valid driving license. The observations of Supreme Court in *National Insurance Company V. Swaran Singh (2004) 3 SCC 297* to the following effect need to borne in mind:-

> "The provisions contained in the said Act provide also for grant of driving licence which is otherwise a learner's licence. Learner's licences are granted under the rules framed by the Central

> Government or the State Governments in exercise of their rule making power. Conditions are attached to the learner's licences granted in terms of the statute. A person holding learner's licence would, thus, also come within the purview of "duly licensed" as such a licence is also granted in terms of the provisions of the Act and the rules framed thereunder. It cannot, therefore, he said that when a vehicle is being driven by a learner subject to the conditions mentioned In the license, he would not be a person who is not "duly licensed" resulting in conferring a right on the insurer to avoid the claim of the third party. It cannot be said that a person holding a learner's license is not entitled to drive the vehicle. Even if there exists a condition in the contract of insurance that the vehicle cannot be driven by a person holding a learner's license, the same would run counter to the provisions of Section 149(2) of the said Act. If a vehicle at the time of accident was driven by a person having a learner's licence, the insurance companies would be liable to satisfy the decree."

15. In above view, the finding returned by the tribunal about breach of terms and conditions of the insurance policy is set aside. The recovery rights granted against the appellants in MAC appeal no. 431/2013 and 252/2013 are vacated.

16. By order dated 18.03. 2013 in MAC appeal no. 251/2013, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General, from out of which sixty percent (60%) was allowed to be released to the claimants, the balance being kept in FDR with UCO Bank, Delhi High Court Branch for a period of six months to be renewed periodically. The Registrar General shall now calculate the amount payable to the claimants in terms of the award modified as above and release the balance to them refunding the excess in deposit with statutory deposit, if made, to the insurance company.

17. The appeals are disposed of in above terms.

R.K.GAUBA
(JUDGE)

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