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

Date of Decision: 04.05.2016

\+ MAC.APP. 392/2014 and CM No.7492/2014

UNITED INDIA INSURANCE CO LTD ..... Appellant

Through: Mr. Sameer Nandwani, Advocate

versus

SUBHADRA YADAV & ORS ..... Respondents

Through: Mr. Mukesh Kr. Verma, Adv.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Ram Avtar Yadav, 44 years old, employed with M/s. Hawk-Eye Protection & Detective Services (P) Ltd. at a gross salary of ₹ 9200/- p.m. was riding on a motor cycle with his Field Officer on 10.11.2011 when it was involved in a collision against another motor vehicle, resulting in both falling down, suffering injuries, Ram Avtar Yadav dying in the consequence. The accident claim case (MAC petition no.29/2012) was instituted on 14.02.2012 before the Motor Accident Claims Tribunal (Tribunal) by first to fifth respondents (claimants) seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988 (M.V. Act). It was alleged before the Tribunal that the motor vehicle which had caused the

accident was Wagon R Car bearing registration no.DL-2CZ-7409 (the car), owned and driven by the sixth respondent, it being admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question. The said owner-cum-driver of the car and the insurer were impleaded as respondents before the tribunal. While the sixth respondent submitted written statement generally denying the allegations in the claim petition but referring to the insurance cover, the insurer in its written statement took the usual defences without making any clear averment as to the involvement of the car.

2. The tribunal held inquiry and, by judgment dated 14.02.2014, accepted the case of the claimants about death having occurred due to negligent driving of the aforementioned car. The compensation in the sum of ₹17,86,250/- was awarded with interest at the rate of 9% p.a. with direction to the insurer to pay, the said amount being inclusive of ₹15,06,960/- computed as loss of dependency.

3. By the appeal at hand, the insurer submits that the story of involvement of the aforementioned car in the accident has been fabricated and that the accident had actually occurred on account of the vehicle described as Skoda, the full particulars whereof were not noted. In this context, reference is made to a report purportedly lodged on 11.11.2011 by Jandev Yadav, the brother of the deceased, addressing it to the Station House Officer of the local police station Kasna, District Gautam Budh Nagar, U.P., copy whereof has been submitted (at page 43 of the paper book).

4. Having heard arguments and perused the record, this court finds no merit in the above contention. The claim case has to be decided on the basis of evidence led during inquiry. As noted earlier, there was no specific denial of the involvement of the car in the accident by either of the two respondents. The evidence led by the claimants through an eye witness Manoj Kumar (PW-2) affirming on oath that the accident had occurred on account of the motor cycle being hit by the above-mentioned Wagon R car has gone unchallenged. During the cross-examination primarily conducted by the counsel for the insurer, not even a remote suggestion was given to the effect that the offending vehicle was not Wagon R car but another car make Skoda. The witness was not confronted with the purported report made by the brother of the deceased to the local police. Even otherwise, it is clear from the material on record, that the brother of the deceased was not an eye witness to the accident. Concededly, in the report under Section 173 of the Code of Criminal Procedure, 1973 (Cr. PC) that was filed on conclusion of investigation of the corresponding case registered by the police, reference was made to the car which is mentioned as the offending vehicle in the present proceedings.

5. In above view, the contention of the insurer in appeal cannot be accepted.

6. On the quantum, the insurer has raised only one issue, i.e. the addition of future prospects of increase to the extent of 30% while calculating the loss of dependency. The evidence with regard to the engagement of the deceased in the employment with M/s. Hawk-Eye Protection & Detective Services (P) Ltd. was brought in through the testimony of Vachaspati

Mishra, (PW-3), HR officer of the said company. Having gone through the material submitted by him, it is found that the deceased was in regular employment with the said entity, the progressive rise in the income in the said employment being inherent in the terms and conditions. Thus, the addition of future prospects cannot be grudged.

7. The appeal is, therefore, found to be unmerited and is liable to be dismissed.

8. By order dated 29.04.2014, the insurance company had been directed to deposit the entire awarded amount with accrued interest with the Registrar General, out of which 50% was allowed to be released, the balance to be kept in a fixed deposit receipt. The Registrar General shall now take necessary steps for the balance also to be released to the claimants, in terms of the impugned judgment.

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

10. The appeal and the pending application are disposed of in the aforesaid terms.

R.K. GAUBA
(JUDGE)

MAY 04, 2016
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