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

Date of Decision: 12th January, 2016

+ MACA 521/2013

**CHOLAMANDALAM MS GENERAL
INSURANCE CO LTD**

..... Appellant

Through: Ms. Suman Bagga, Adv.

versus

SMT DHANWANTI & ORS

..... Respondents

Through: Mr. S. K. Pandey and Mr. P. K.
Dwivedi, Advs. for R-1 to 3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. This motor accident claim appeal raises a short point for consideration.

2. By judgment rendered on 24.01.2013 in MACT case no.34/2012, later corrected by order dated 14.02.2013, the Accident Claims Tribunal (hereinafter referred to as “the Tribunal”) allowed the claim petition under Section 140 read with Section 166 of Motor Vehicles Act, 1988 (hereinafter referred to as “ M. V. Act”) and awarded in favour of the respondent nos. 1 to 3 herein compensation in the sum of Rs.38,64,839/- apportioning it in the ratio of 65%, 5% and 30 % respectively in their favour, on account of death of Raj Kishore son of Kalu Ram in a motor vehicular accident that occurred on 18.06.2010 at Panna Satna Road

near Mohangarhi Panna, Madhya Pradesh, subject matter of FIR No. 249/2010 under Sections 279/304-A of Indian Penal Code, 1860 of police station Panna (Madhya Pradesh). The deceased Raj Kishore was aged 51 years working as Assistant in Airport Authority of India, Civil Aviation Ministry, posted at Khajuraho (Madhya Pradesh) at the time of his death. The claimants (respondent nos.1 to 3) are his wife (widow), married daughter and son respectively. In arriving at the amount to be directed to be paid as compensation, the Tribunal, having reached a finding that the annual income of the deceased was Rs.5,66,904/- at the time of death, allowed a deduction to the extent of one third on account of personal living expenses. It is the rate of this deduction which is the bone of contention in the appeal at hand. The appellant/insurer argues that since the claimants included a married daughter and a working son, the deduction should have been made @ 50% for the reason only the widow could be treated as the dependent who deserved to be compensated.

3. I have heard arguments of both sides but on facts find no substance in the contention raised in the appeal.

4. The material on record clearly shows that the son was aged about 21 years when Raj Kishore died. His date of birth is indicated in the documents on record as 20.01.1989. The claim petition pleaded that he was a dependent on his father. At the time of inquiry into the claim petition, the widow (respondent no.1) submitted the affidavit (Ex.PW1/A) sworn on 17.10.2012, clearly stating that all the claimants, including the son were dependant on Raj Kishore. It was during her cross-examination on 17.10.2012 that she conceded that the son

(respondent no.3) was working in the office of the SDM, Defence Colony. From this concession itself, it cannot be assumed that the son was gainfully employed at the time his father died. No further inquiry was made to ascertain from the witness (PW1) as to what was the level of income earned by the son from the said employment which she clarified was on “contract basis”. Her statement, thus, clearly indicated that son has not been secured any regular employment so as to be treated as self reliant or, to put it conversely not dependent on his father at the time of his death. It was not even enquired of PW1 as to when the son had secured the contractual employment in the office of SDM or as to what was the nature of the said employment or, for that matter, whether it was commensurate with his qualifications or not.

5. In view of above facts and circumstances, the contention of the appellant that the number of dependants left behind by the deceased was only one, namely the widow, is not correct.

6. For the foregoing reasons, the appeal is devoid of substance and is, thus, dismissed.

7. By order dated 30.05.2013, the appellant insurance company was directed to deposit entire awarded amount with upto-date interest with the Registrar General of this court and upon the said deposit being made the Registrar General was directed to release 60 % of the awarded amount in favour of the claimants as per terms and conditions fixed in the impugned order. The claimants submit through counsel that no amount was withdrawn in terms of the said directions. They now press for release of the entire deposited amount to which appellant has no objections. Learned counsel for appellant submits that alongwith the

appeal, the appellant had deposited Rs.25,000/-, in terms of first proviso of Section 173(1) of M. V. Act. Learned counsel submits that the said amount being statutory deposit will have to be released in favour of the appellant. Counsel for respondents has no objection to this prayer.

8. Both requests are accordingly allowed. The statutory deposit be refunded to the appellant after confirming that it has satisfied the award. The respondent nos.1 to 3 shall be entitled to release of the amount deposited with the Registrar General and in case there is any amount outstanding, they may press for its recovery by taking out execution before the tribunal, following appropriate procedure.

R.K. GAUBA
(JUDGE)

JANUARY 12, 2016/ssc