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

Date of Decision: 4th March, 2016

\+ **MAC.APP. 458/2007**

THE NEW INDIA ASSURANCE CO.LTD.

..... Appellant

Through Mr. Mohan Babu Aggarwal, Adv.

versus

ARCHANA SANTOSHI & ORS.

..... Respondent

Through Rohit Agarwal and Ms. Aruhima Chatterjee, Advs. for R-1 to 4
Mr. Navneet Goyal, Adv. for R-9

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appeal at hand was filed by the insurance company questioning the correctness and propriety of the view taken by the Motor Accident Claims Tribunal (the Tribunal) in the judgment dated 25.01.2007 in motor accident claim case registered as suit No.145/2006 awarding compensation in the sum of Rs.35,28,600/- in favour of the first to fourth respondents (collectively, the claimants) on account of death of Prakash Santoshi in a motor vehicular accident that occurred on 03.01.2003 involving a three wheeler scooter (TSR) bearing registration No.DL 1RE 2500. The TSR was

registered on the relevant date in the name of the fifth respondent Jai Singh though on the basis of evidence adduced it was found that the ninth respondent Prithvi Raj was the owner in possession, the vehicle being concededly insured against third party risk with the appellant insurance company for the period in question. The insurance company was directed to pay the compensation under the indemnity clause of the insurance policy.

2. The Tribunal assessed the loss of dependency in the sum of ₹31,53,600/- on the basis of evidence showing that the deceased was receiving ₹15,530/- per month as remuneration with ₹6,000/- per month in the nature of house rent paid directly to the landlord in respect of the residential accommodation arranged for him by the employer M/s Bholanath International Ltd. where he was working in the capacity of General Manager.

3. Though the appeal was filed raising several issues including about there being no liability on the part of the insurance company to pay under the insurance policy, at the hearing the learned counsel for the appellant submitted that the only ground pressed is with regard to the computation of loss of dependency, the plea being that inclusion of ₹6,300/- paid by the employer towards house rent was improper.

4. Arguments have been heard. This Court is of the view that house rent paid by the landlord was a perquisite, which was part of the terms and conditions of the employment and it being of monetary value, it had to be factored in to consider the total earnings of the deceased. After all, if such allowance were not to be paid by the employer, the employee (the deceased)

would have drawn from his own resources to arrange for the residential accommodation. In terms of the judgment in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.,* (2009) 6 SCC 121, the only deduction to be made in calculating loss of dependency is towards income tax liability.

5. Thus, there is no error found in the view taken by the Tribunal.

6. The appeal is dismissed.

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

R.K. GAUBA
(JUDGE)

MARCH 04, 2016
VLD