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

Date of Decision: 11th March, 2016

\+ **MAC.APP. 314/2009**

ANGOORI DEVI & ANR. ..... Appellants

Through: Mr. Shashank Singh, Adv.

versus

SURESH & ORS. ..... Respondents

Through: Mr. Amit Gaur, Adv. for R-3

WITH

MAC APP. 302/2009

NATIONAL INSURANCE CO. LTD. …..Appellant

Through: Mr. Amit Gaur, Adv.

Verses

ANGOORI DEVI & ORS.) … Respondents

Through: None.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Both these appeals arise out of judgment dated 30.03.2009 on claim petition registered as suit no. 838/2006 passed by the motor accident claims tribunal (the tribunal) on the claim petition presented by the appellants in MAC appeal no. 314/2009 (hereinafter referred to as "the claimants") under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act) for

compensation on account of death of their son Nikesh Shokeen, aged 25 years in a motor vehicular accident that occurred at about 02:00/03:00 PM on 20.06.2006 near Rajoda Bye Pass, involving truck bearing registration no.MP-06E-1111 (the offending vehicle) which admittedly was insured against third party risk with the insurance company, which is appellant in MAC appeal no. 302/2009 (insurer) for the period in question. It may be added here that the driver and registered owner (insured) in respect of offending vehicle were impleaded as party respondent but they opted to suffer the proceedings *exparte*.

2. The tribunal, on the basis of evidence adduced, concluded that the deceased would have been contributing ₹28,00/- for upkeep of his parents (the claimants). It directed that the said amount of money be paid on monthly basis to the claimants alongwith ₹80,000/- awarded under the head of loss of love & affection to be shared equally by each of them, with further direction that the amount of compensation to be paid on monthly basis shall get increased by 25% at the interval of every five years. It may be added here that by way of earlier order dated 21.11.2007, the tribunal had awarded ₹50,000/- under no fault liability clause in Section 140 of the MV Act apportioning it in equal shares amongst the two claimants. In the final judgment, there was no direction with regard to adjustment of the said amount already paid.

3. The claimants preferred MAC appeal no.314/2009 raising grievances that the compensation had not been properly assessed as the evidence showing the income of the deceased to be in the region of ₹8,000/- per month was wrongly rejected and further that the loss of dependency had not

been worked out on the basis of multiplier. The claimants in their appeal fairly conceded that the method of monthly payment of compensation adopted by the tribunal in the impugned judgment is not in accordance with prevalent law which is precisely one of the contention raised by the insurance company in its appeal.

4. It is noted that by order dated 03.07.2009 passed in MAC appeal no. 302/2009 of the insurer, the learned single judge then seized of the matter had directed an amount of ₹1,00,000/- to be deposited by the appellant with the Registrar General and for payment of ₹2800/- per month to be made by the insurer to the claimants by means of cheques to be remitted by the registered AD post to them by seventh day of each calendar month. Subject to compliance being made with the said direction, the execution of the award granted by the tribunal was stayed.

5. This court does not find any direction in the order dated 03.07.2009 for the amount of ₹1,00,000/- directed to be deposited that the Registrar General to be released to the claimants. There is some confusion on record in that, by order dated 14.12.2009, the learned single judge dealing with the matter at that stage sought clarification/confirmation as to whether the said amount of ₹1,00,000/- had been received by the claimants or not. The learned counsel on both sides present today are ignorant with regard to the compliance with the said earlier direction.

6. The directions of the tribunal in the impugned judgment for monthly compensation to be paid cannot be approved of. The prevalent law requires the loss of dependency to be computed and, thus, the compensation to be

paid in lump sum to be worked out, *inter-alia*, by including the suitable awards under non-pecuniary heads of damages. In these circumstances, the grievances of both sides are found to be just and proper.

7. Consequently, the impugned judgment is set aside. The matter is remitted to the tribunal for further inquiry and fresh adjudication. The parties are directed to appear before the tribunal on 22nd April, 2016.

8. Needless to add, the amounts already received by the claimants, whether in terms of the interim award in terms of Section 140 of the MV Act or under the impugned judgment by way of monthly remittances or in terms of the interim orders by this court, as noted above would need to be suitably adjusted against amount to be ordered payable as compensation to the claimants.

9. For removal of doubts, it is clarified that the insurance company will not hereinafter be obliged to remit any further amount of money to the claimants. Its liability to pay would arise only after the tribunal has decided the claim petition afresh.

10. The Registrar General shall ascertain if the amount of ₹1,00,000/- mentioned in the aforequoted orders of this court was deposited by the insurance company in the court or whether it has been released and communicate the facts to the tribunal for its information and further necessary action. In case, the said amount is still lying with the court, the same shall be presently refunded to the insurance company.

11. The statutory deposit, if made, shall be refunded.

12. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 11, 2016
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