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

Date of Decision: 29th November, 2016

(i) + **MAC.APP. 639/2013 & C.M.No.15434/2013**

TATA AIG GENERAL INSURANCE CO. LTD.

..... Appellant

Through : Mr.Arbaaz Hussain, Advocate for Ms.Shantha Devi Raman, Advocate

versus

LAXMI JHA & ORS.

..... Respondents

Through : Mr.Anshuman Bal, Advocate for respondent Nos.1 to 4.

(ii) + **MAC.APP. 663/2013**

TATA AIG GENERAL INSURANCE CO LTD

..... Appellant

Through : Mr.Arbaaz Hussain, Advocate for Ms.Shantha Devi Raman, Advocate

versus

SH BABLU & ORS

..... Respondents

Through : Mr.Anshuman Bal, Advocate for respondent Nos.1 to 4

(iii) + **MAC.APP. 866/2013**

SMT LAXMI JHA & ORS

..... Appellants

Through : Mr.Anshuman Bal, Advocate

versus

SH MANISH GUPTA & ORS

..... Respondents

Through : Mr.Arbaaz Hussain, Advocate for Ms.Shantha Devi Raman, Advocate for respondent No.3/Insurer.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

The above three appeals are directed against common impugned Award of 15th April, 2013, vide which the compensation of ₹13,55,500/- with interest has been awarded to the Claimants in respect of a road accident which took place on 19th June, 2011 at about 08.50PM in front of Pillar No.19B, Sultanpur Metro Station, on MG Road, New Delhi.

In this accident, husband of Claimant *Laxmi Jha* had died. The remaining Claimants are the children and parents of deceased. The above first two appeals are by the Insurer whereas the above captioned third appeal is by the claimants, who seek enhancement of compensation.

With the consent of learned counsel for parties, above captioned three appeals were heard together and are being disposed of by this common judgment.

The challenge to impugned Award by learned counsel for Insurer is on the ground that eye-version account of the witnesses *Babloo* and *Kapil* are contradictory and so negligence of the offending vehicle is not proved. Learned counsel for Insurer submits that grant of future prospects is wholly unjustified because income of the deceased has been assessed on minimum wages as he was not having any permanent employment. Thus, it is submitted that the compensation awarded deserves to be suitably reduced.

To the contrary is the submission of learned counsel for claimants, who asserts that Insurer had not filed any application under Section 170 of the *Motor Vehicle Act, 1988.* So, it is submitted that the stand now taken by learned counsel for Insurer is not available in view of Supreme Court decision in *National Insurance Co Ltd vs. Nicolletta Rohtagi & Ors* (2002 ACJ 1950). To seek enhancement of compensation, learned counsel for claimants submits that in view of the decision of Supreme Court in *Rajesh & Ors vs. Rajbir Singh & Ors* : (2013) 9 SCC 54, the compensation granted under the head *'Loss of love and affection'* and *'Loss of Consortium'* ought to be suitably enhanced to ₹1.00 Lac each and the funeral expenses also deserve to be enhanced to ₹25,000/- and the impugned Award be suitably modified. Nothing else is urged by either side.

Upon hearing and on perusal of impugned Award, the evidence on record, I find that in the absence of application under Section 170 of the *Motor Vehicle Act, 1988* by the Insurer, all the grounds are not available to the Insurer and only limited grounds that are provided under sub-Section 2 of Section 149 of the *Motor Vehicle Act, 1988* are available. In view thereof, the Insurer is precluded from challenging the impugned Award on the ground of negligence or quantum of compensation awarded. In this view of the matter, the above first two appeals and application are dismissed.

Insofar as the claim for enhancement of compensation is concerned, I find that in view of Supreme Court decision in *Rajesh (*supra*)*, compensation granted to the Claimants under head of *'Loss of Love and Affection'* deserves to be enhanced from ₹25,000/- to ₹1.00 Lac; and compensation granted under the head *'Loss of Estate'* twice over is rectified by granting compensation ₹1.00 Lac under the head of *'Loss of Consortium'* and funeral expenses are also enhanced from ₹ 10,000/- to ₹25,000/-. Thus, the compensation granted is enhanced from ₹13,55,500/- to ₹15,35,500/-. The enhanced compensation would carry the interest as awarded by learned Tribunal in the impugned Award and the disbursement of the enhanced amount shall be in the same ratio as already granted by learned Tribunal except that the compensation of ₹1.00 Lac granted under the head of *'Loss of Consortium'* shall go to the widow of the deceased alone.

The Insurer is granted eight weeks' time to deposit the enhanced compensation in terms of above modified Award in the bank accounts of Claimants in Delhi High Court Branch of UCO Bank. The statutory deposits, if made by the Insurer shall be refunded.

With the aforesaid modifications, the above three appeals are disposed of.

(SUNIL GAUR)
Judge

NOVEMBER 29, 2016
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