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

Date of Decision: October 27, 2016

+ **MAC.APP. 525/2014**

SHRIRAM GENERAL INSURANCE CO LTD Appellant
Through: Mr. Sameer Nandwani, Advocate

versus

RAZIA & ORS Respondent

Through: Nemo

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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The challenge in this appeal is to Award of 14th March, 2014 pertaining to grant of compensation of ₹41,07,804/- with interest at the rate of 7.5% *per annum* on account of death of a young businessman aged 27 ½ years. The brief facts, as noted in the impugned, are as under: -

“Briefly stating the facts, as stated by petitioners, are that on 14.02.2013, Mohd. Yusuf, the deceased, was driving the Hero Honda Passion motorcycle bearing registration No.DL-1ST-9079 and was going from his home towards Nand Nagari and when he reached on Wazirabad road, in front of Hernam Palace, a recovery van bearing No.HR-38G-2502, driven by its driver rashly, negligently and at a high speed, hit the motorcycle. Mohd. Yusuf fell down and came under the rear wheel of the offending vehicle. It is stated that Mohd. Yusuf was taken to GTB hospital where he expired on the same day. It is stated that deceased was

doing the work of supplying of jeans buttons and was earning ₹17000/- per month.”

On the basis of evidence led, learned Tribunal has relied upon the two Income Tax Returns (for short ITRs) of the deceased to grant future prospects at the rate of 50% on the assessed income of the deceased and while taking note of the fact that the recovery van in question was towing a generator (*although it was meant to tow the vehicle*), had concluded that breach of such condition would not absolve appellant-insurer from paying the compensation awarded and so, the recovery rights have been declined to appellant-insurer.

Learned counsel for appellant contends that there was clear violation of the terms and conditions of the policy and so, recovery rights ought to have been granted to appellant qua the respondent No.6, who is the owner of the offending recovery van in question. It is submitted that the ITRs relied upon could not be taken into consideration to grant future prospects. Thus, it is submitted that impugned Award deserves to be modified to the extent that recovery rights ought to be granted to appellant and the compensation granted to respondents-claimants under the head of future prospects ought to be set aside.

While entertaining this appeal, operation of the impugned Award was stayed subject to appellant depositing the entire awarded amount with interest with the Registrar General of this Court and 70% of the awarded amount with interest was directed to be released to respondents-claimants and it was accordingly done. As per order of 18th February, 2016, the service upon respondents was complete. Since none had

appeared on behalf of respondents, they were set *ex parte* vide order of 2nd August, 2016.

Upon hearing and on perusal of the impugned Award and the evidence on record, this Court finds that learned Tribunal is right in concluding that breach of every terms and conditions of insurance policy would not absolve the Insurance Company to pay the compensation. The so-called breach of the terms and conditions of the insurance policy was not such which would enable appellant to obtain the recovery rights because ground realities are to be taken note of. It is often seen that recovery vans for towing the vehicles, at times are called upon to tow away generators, which are causing pollution. So, in a case like the instant one, the view taken by learned Tribunal to deny recovery rights to appellant cannot be faulted with.

Regarding the grant of future prospects on the assessed income of the deceased, this Court finds that a hyper-technical view is not to be taken as strict rules of evidence are not applicable to the proceedings of such cases and there is no basis to conclude that the ITRs downloaded from the official website of the Income Tax Department ought not to be relied upon. A bare perusal of the ITRs relied upon reveals that the gross income of the young businessman in the first year was ₹1.78 lacs and in the succeeding year, it was ₹2.2 lacs. In the facts and circumstances of this case and while taking into account the vocation and the age of the deceased, this Court find that the grant of 50% towards future prospects is well justified.

In view of the aforesaid, I find no substance in this appeal. The

remaining deposited amount be released to respondents-claimants as per the impugned Award. The statutory deposit, if made by appellant-insurer, be refunded.

With aforesaid directions, this appeal and the application are disposed of.

(SUNIL GAUR)
JUDGE

OCTOBER 27, 2016

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