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

Date of Decision: 04.05.2016

\+ MAC.APP. 706/2013

THE NEW INDIA ASSURANCE CO. LTD. ..... Appellant

Through: Mr.Pankaj Seth and Mr. Sahoumik Mazumdar, Advs.

versus

SUBHASH CHAND & ORS ..... Respondents

Through: None.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Gaurav Kumar, a 20 years old person and a bachelor died as a result of injuries suffered in a motor vehicular accident that occurred on 26.06.2011 involving rash/ negligent driving of the truck bearing registration No. UP-25T-7107 (the offending vehicle), admittedly insured against third party risk with the insurance company (the insurer). His parents, first and second respondents (the claimants), instituted an accident claim case (suit No. 252/12/2011) seeking compensation under Sections 166 and 140 of the Motor Vehicle Act, 1988 (the M.V. Act) impleading the insurer, the driver and owner of the offending vehicle as respondents. The Tribunal held inquiry and, by judgment dated 30.04.2013, held the case about the death having occurred due to negligent driving of the offending vehicle brought

home. It awarded compensation in an amount of ₹6,55428/- with interest @ 7.5% per annum from the date of filing of the petition till realization in favour of the claimants, the said amount inclusive of ₹6,10,428/- on account of loss of dependency, ₹25,000/- on account of love & affection and ₹10,000/- each towards loss to estate and cremation charges.

2. The insurance company, which has been burdened with the liability to pay, has come up in appeal challenging the calculation of loss of dependency, its prime contention being that in absence of any formal proof as to gainful engagement, the notional income specified in the Second Schedule of the M.V. Act should have been adopted as the bench mark. The contention needs only to be noted and rejected as the claim was not presented under Section 163A of M.V. Act.

3. The evidence on record shows that the deceased had completed a certificate course from a vocational training centre and was in private service. It does appear that no formal proof of service had been mustered. But the Tribunal proceeded to assume the income on the basis of minimum wages payable to a skilled worker. It deducted 50% towards personal & living expenses and applied the correct multiplier of 13 to calculate the loss of dependency. There is , thus, no error in the impugned judgment.

4. In above view, the appeal is dismissed.

5. Statutory amount, if deposited, be refunded to the appellant.

R.K. GAUBA
(JUDGE)

MAY 04, 2016
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