$~25

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

Date of Decision: 12.05.2016

\+ MAC.APP. 583/2014 and CM No.10727/2014

FUTURE GENERALI INDIA INSURANCE CO LTD ..... Appellant
Through: Mr. Abhishek K. Gola, Advocate

versus

PRAVEEN BAINS & ORS ..... Respondents
Through: Mr. Gurmit Singh Hans, Ms. Aarti Manchanda and Ms. Richa Verma, Advocates for R-1 & 2

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Rakesh Kumar, aged 36 years, died in a motor vehicular accident that occurred on 20.02.2012 statedly involving negligent driving of a truck bearing registration no.HR-55A-4559 (offending vehicle) which was admittedly insured against third party risk with the appellant insurance company for the period in question. The dependant family members of Rakesh Kumar, first to third respondents in appeal (claimants), instituted an accident claim case (MACP 275/2012) before the Motor Accident Claims Tribunal (tribunal) on 09.10.2012. In the said proceedings, besides the insurer, the driver and owner of the offending vehicle respectively were also impleaded as parties. On the basis of evidence led during inquiry, the

tribunal, by judgment dated 16.05.2014, upheld the case of the claimants that death had occurred due to the negligent driving of the offending vehicle. The said finding has attained finality as there was no challenge thereto.

2. By judgment dated 16.05.2014, the tribunal awarded compensation in the sum of ₹31,15,000/- with interest at the rate of 7.5% p.a. from the date of filing of the petition till realization, directing the insurer to pay the said amount which is inclusive of loss of dependency at ₹28,80,000/- calculated on the basis of income found to be in the sum of ₹16,000/- p.m. on the basis essentially of the evidence of Sunita Sukhija (PW-3) affirming that the deceased was employed in her restaurant in Chanakya Puri, New Delhi for the last 5 years preceding the date of accident.

3. The insurer which has been fastened with the liability has come up in appeal stating that the evidence of PW-3 about the employment of the deceased or his earnings therefrom has been wrongly believed without any corroborative proof, particularly as the witness took the plea that the records maintained by her office respecting all the employees had been destroyed in a fire incident. During the course of argument when question arose as to why the oral word of PW-3 with regard to the employment and earnings of the deceased should be believed, the counsel for the claimants submitted that he is agreeable to the appeal of the insurance company being allowed and the impugned judgment to the extent it awarded compensation to be set aside but requests that he be given further opportunity to adduce proper evidence to corroborate the case about the employment and earnings as cogent evidence in that regard is available.

4. Having regard to the above facts and circumstances, the prayer of both sides is accepted. The impugned judgment to the extent it calculated and awarded compensation is set aside. The matter to the limited extent of calculating the compensation is remitted to the tribunal for further inquiry. During such further inquiry, the claimants shall be allowed opportunity to lead further evidence. Needless to add, the parties which contest shall be entitled to cross-examine the witnesses additionally examined by the claimant and also lead evidence in rebuttal, if any. The parties shall appear before the tribunal for such purposes on 19.07.2016.

5. The insurance company had deposited the entire awarded amount with interest with the Registrar General of this court within the period specified in terms of the interim order dated 23.07.2014, and out of the said deposit, an amount of ₹20 Lakh was allowed to be released to the claimant in terms of the impugned judgment. The said amount already received by the claimants shall be liable to be suitably adjusted in accordance with the award to be passed afresh by the tribunal. The balance of the deposit made by the insurance company shall be presently refunded to it with upto date interest alongwith statutory deposits, if made.

6. The appeal and the pending application are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 12, 2016
yg