$~R-48, 49 & 50

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

Date of Decision: 7th April, 2016

\+ **MAC.APP. 444/2007**

NATIONAL INSURNACE CO. LTD. ..... Appellant
Through: Mr. Pankaj Seth, Adv.

versus

RINA ..... Respondent
Through: Mr. O.P. Mannie & Mr. Manish Mannie, Advs.

\+ **MAC.APP. 520/2007**

RINA & ORS. ..... Appellants
Through: Mr. O.P. Mannie & Mr. Manish Mannie, Advs.

versus

SURAJ PRAKASH & ORS. ..... Respondents
Through: Mr. Pankaj Seth, Adv. for Insurance company.

\+ **MAC.APP. 447/2007**

NATIONAL INSURNACE CO. LTD. ..... Appellant
Through: Mr. Pankaj Seth, Adv.

versus

SHRI JAI & ORS. ..... Respondents
Through: None.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 07.05.2005 at about 5.45 a.m. Ratnakar along with Jai were travelling in three wheeler scooter bearing No. DL-1R-J-1037 (TSR) from Badarpur to Old Delhi Railway Station. The TSR was statedly driven by Suraj Prakash (first respondent in MAC Appeal No. 520/2007, it being registered in the name of Kartar Singh (second respondent in MAC Appeal No. 520/2007 and admittedly insured against third party insurance risk with National Insurance Company Ltd. (appellant in MAC Appeal Nos. 444/2007 and 447/2007). The TSR met with an accident in the area of Red Fort near Saleem Ghat on ring road resulting in both the passengers suffering injuries as a consequence to which Ratnakar died. Two accident claim cases (Suit Nos. 293 and 30/2006) were brought before the motor accident claims tribunal (the tribunal), first by the dependent family members of Ratnakar and, the other, by injured Jai seeking compensation. Both the cases were clubbed together and inquired into. The tribunal eventually passed the order dated 16.05.2007 granting compensation in each case upholding the case that the accident had occurred due to negligent driving of the TSR.

2. In the case of death, the tribunal awarded compensation calculated thus :

Loss of dependency	₹ 5, 15,000/-
Loss of love and affection	₹ 25,000/-
Funeral Expenses	₹ 5,000/-

Loss to estate	₹ 5,000/-
Total compensation	₹ 5, 50,000/-

3. In the case of injuries, compensation was awarded and calculated thus:-

Medical expenses	₹ 1,000/-
Pain and suffering	₹ 50,000/-
Loss of income	₹ 10,000/-
Marriage prospect	₹ 10,000/-
Conveyance and special diet	₹ 5,000/-
Total compensation	₹ 76,000/-

4. In both the cases, the insurer was directed to pay the compensation with interest @ 6% per annum from the date of filing of the respective petition till realization.

5. It appears the insurer had taken the plea that the driver of the offending vehicle was not holding a valid and effective driving license. It was pointed out that the driving license held for light motor vehicle (non-transport) which was not good for purposes of commercial passenger carrying vehicle in the nature of TSR. The tribunal failed to consider the said plea in the judgment which is impugned in all the three appeals before this court.

6. By way of its appeals (MAC Appeal Nos. 444 & 447/2007), the insurer presses for recovery rights with reference to the contention about the driving license. By their appeal (MAC Appeal No.; 520/2007) the dependent family members of Ratnakar (deceased) seek enhancement.

7. Arguments have been heard. Record has been perused.

8. The learned counsel for the claimants in the death case has fairly conceded that the income of the deceased at Rs. 4,000/- has correctly been adopted as the benchmark. He, however, submitted that the deduction on account of personal & living expenses should have been to the extent of 1/4 and the multiplier of 17 should have been adopted. His submissions on both counts are correct inasmuch as the dependent family members are four in number and the age of the deceased at the relevant point of time was 27. Thus, the loss of dependency is calculated as (4,000 x 3 ÷ 4 x 12 x 17) Rs. 6,12,000/-.

9. There is also substance in the grievance about the inadequacy of the non-pecuniary heads of damages and the rate of interest.

10. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, compensation in the sum of Rs. 1 lakh each on account of loss of love & affection and loss of consortium and Rs. 25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation in the case of death of Ratnakar comes to (6,12,000 + 2,50,000) Rs. 8,62,000/-.

11. Following the consistent view taken by this Court, it is directed that the rate of interest shall be 9% per annum from the date of filing of the petition.

12. The award is modified as above.

13. It is directed that the entire enhanced portion of the award including on account of increased rate of interest shall be payable to the widow (first appellant in MAC Appeal No. 520/2007).

14. As regards the plea of breach of terms and conditions of the policy, the fact remains that the driver was holding a valid and effective driving

license. The mere fact that it was not meant for a commercial vehicle cannot be treated as fundamental breach so as to exonerate the insurance company of its liability to indemnify. (*National Insurance Company V. Swaran Singh* (2004) 3 SCC 297)

15. By order dated 23.03.2009 in MAC Appeal No. 444/2007, arising out of the claim due to death of Ratnakar, the insurer was directed to deposit the entire awarded amount with the tribunal within the period specified and upon such deposit it was directed to be released to the claimants in that case excluding the portion meant to be kept in fixed deposit. Similarly, in MAC Appeal No. 447/2007, by order dated 23.03.2009, relating to the injury case, the insurer had been directed to deposit the awarded compensation with proportionate interest with the tribunal which was directed to release ₹20,000/- with remainder to be kept in fixed deposit for a period of three years from which interest was permitted to be released. The tribunal shall now release the balance to the respective claimants.

16. The insurer is directed to deposit the amount payable on account of modification with the tribunal within 30 days of today.

17. The appeals are disposed of in above terms.

18. Statutory deposits made by the insurer shall be refunded.

R.K. GAUBA
(JUDGE)

APRIL 07, 2016
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