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

Date of Decision: 05th May, 2016

+ **MAC.APP. 515/2007**

KOMAL & ORS.

..... Appellant

Through: None.

versus

DARSHAN KUMAR & ORS.

..... Respondents

Through: Mr. Pradeep Gaur, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 02.06.2007, the motor accident claims tribunal (the tribunal) decided the claim case (suit no.312/2005) instituted by the appellants (the claimants) seeking compensation on account of death of Amit Dhingra, aged 23 years, in a motor vehicular accident that occurred on 04.07.2005 statedly involving motorcycle bearing registration no.DL-7SAB-8495 (the motorcycle) on one hand, and bus bearing registration no.DL-1PA-2854 (the bus) on the other. As per the claimant's case, the motorcycle was being driven by the deceased when it was hit by the bus driven by its driver (the first respondent) in negligent manner. It was proved in the inquiry before the tribunal that the bus is owned by the second respondent

and was admittedly insured against third party risk with the third respondent (the insurer).

2. On the basis of evidence led, the tribunal held that the accident had indeed occurred on account of negligent driving of the bus. It was, however, also held that the deceased was negligent as he was not wearing helmet at the relevant point of time. For this reason, the fault was apportioned to the extent of 20% at his door.

3. The tribunal calculated loss of dependency at ₹6,80,000/- but reduced it by 20% and awarded non-pecuniary heads of damages of ₹10,000/- each towards funeral expenses, loss of estate and loss of consortium to award the total compensation in the case in the sum of ₹5,84,000/- with interest at the rate of seven & half percent (7.5%) per annum.

4. The appeal at hand was preferred in August, 2007 by the claimants questioning the finding returned on account of contributory negligence, also raising the issue that the loss of dependency had not been properly worked out because the multiplier (17) adopted was low. The notice of the appeal was served on all the respondents and they appeared before the court on 18.02.2008. The appeal was admitted by order dated 31.03.2009 and directed to be shown in category of regulars. When the appeal has been called out, no one has appeared for the claimants. This was the state of affairs even on the last date of hearing. There being no good reason to defer the hearing again, the counsel for the insurer who is only present, has been heard and record perused.

5. During the course of hearing, it was submitted by the learned counsel for the respondent/insurance company that the insurer had also filed an appeal (MAC appeal no.595/2007) which has already been disposed of by another learned single judge of this court on 27.04.2012. On this submission being made, under directions, the court master has generated from the website, a copy of the judgment dated 27.04.2012 in MAC appeal no.595/2007 and placed the same before the court. The said copy of the judgment has been taken on record and perused. It is found that at the time of argument on 20.04.2012 when the issue of appropriate compensation was being considered, at the instance of the insurer, the learned single judge (then in seisin of the matter) was of the view that a higher compensation deserved to be awarded. It was argued by Mr. Pradeep Gaur, Advocate for the insurer that the court could not enhance the award since the claimants had not filed cross-objections. The court considered this submission and rejected the same by detailed reasoning in the judgment dated 27.04.2012. The fact that Mr. Pradeep Gaur, Advocate has been representing the insurance company in the appeal at hand since 18.02.2008 shows that what was argued before the learned single judge on 20.04.2012 was wholly incorrect and against the record. This, in the view of this court, is not only unfair but highly irresponsible.

6. Be that as it may, the judgment dated 27.04.2012 shows that the learned single judge (then in seisin) reassessed the loss of dependency on the multiplier of 18 and also made another correction by reducing the deduction on account of personal expenses from one third to one fourth. He directed compensation in the sum of ₹6,88,000/- to be paid by the insurer with

interest, after deducting 20% on account of contributory negligence. The said result of the appeal of the insurance company takes care of the question of just compensation.

7. The only issue that survives for consideration in the appeal at hand, therefore, is of the contributory negligence.

8. It is noted that the evidence on record showed that the motorcycle was carrying more than one passenger on the pillion. The eye witness examined by the claimants themselves stated that the motorcycle was running at high speed and that neither the motorcycle rider (deceased) nor the pillion rider were wearing helmets. In these circumstances, the finding of contributory negligence does not call for any interference.

9. In the result, the appeal is dismissed.

MAY 05, 2016
ssc

R.K. GAUBA
(JUDGE)