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

Date of Decision: 30th March, 2016

\+ **MAC.APP. 726/2012**

RELIANCE GENERAL INSURANCE CO LTD ..... Appellant
Through Mr. P Acharya, Adv. with Ms. Nitika Chaturvedi, Adv.

versus

SHYAM SUNDER SHARMA AND ORS ..... Respondent
Through Mr. Saleem Akhtar, Adv. for R-1 & 2

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Vinod Kumar Sharma, 18 years old bachelor, died as a result of injuries suffered in a motor vehicular accident that occurred on 15.08.2010 involving two motorcycles bearing registration Nos. HR 47A 4884 and RG 18G 2293, both insured against third party risk for the period in question with Reliance General Insurance Co. Ltd. (the appellant herein). An accident claim case MACT No.32/11/10 was brought before the motor accident claims tribunal (the tribunal) on 26.10.2010 by his father Shyam Sunder Sharma and younger brother Lakhan Sharma seeking compensation under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act). In the said claim case, the drivers and owners of both the vehicles were impleaded as respondents in addition to the appellant insurance company (insurer) on account of its liability to indemnify, it having issued insurance policies against third party risk in their respect for the period in question.

2. The tribunal held inquiry and on that basis passed judgment dated 29.05.2012 returning finding that the accident had occurred due to negligence on the part of the driver of both vehicles, each driver having been held to have contributed to the cause for accident in equal proportions, and the liability was fastened accordingly. The tribunal assessed the compensation in the sum of ₹7,31,384/-, which includes ₹6,96,384/- towards loss of dependency besides ₹25,000/- towards loss of love and affection and ₹5,000/- towards cremation expenses and loss of estate. The insurer being common to both the vehicles was asked to indemnify and pay the compensation. The insurer had, however, taken the plea of breach of terms and conditions of the insurance policies which was upheld and, thus, while being directed to satisfy the award, it was granted right to recover the compensation, thus paid from the respective drivers and owners of the two vehicles.

3. By the appeal at hand, the insurer questions the calculation of loss of dependency on the ground it has been calculated wrongly on the multiplier of 18, ignoring the fact that the claim primarily was preferred by the father. This contention must be upheld in the face of the fact that the deceased was a bachelor. The claimant father (Shyam Sunder Sharma) is present in Court and on being asked his counsel submitted that his date of birth is 08.12.1961. This would mean that he was 48 years old when the death occurred. In this view, the loss of dependency is to be calculated on the multiplier of 13. Since the tribunal found the monthly dependency loss to be ₹3,224/- per month. Thus, the total loss of dependency is calculated as (93,224 x 12 x 13) ₹5,02,944/- rounded off to ₹5,03,000/-.

4. The grievance of the claimant is that the non pecuniary damages have not been adequately awarded. 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 ₹1 lakh on account of loss of love & affection and ₹25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case is computed as (5,03,000 + 1,50,000) ₹6,53,000/-.

5. It is further contended by the insurance company that in the face of finding of breach of terms and conditions of the insurance policies, it should have been exonerated. This contention must be rejected as the interest of the insurer is duly protected by grant of recovery rights.

6. By order dated 27.07.2012, the insurer had been directed to deposit the awarded amount with up-to-date interest with UCO Bank, Delhi High Court branch for the period specified whereupon 50% was allowed to be released, the balance having been kept in fixed deposit receipt for a period of six months to be renewed from time to time. The Registrar General shall now calculate the amount payable to the claimants in terms of the award modified as above and release the remainder from out of the balance lying in deposit, refunding the excess to the insurer with statutory deposit, if made.

7. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 30, 2016
VLD