$~41

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

Date of Decision: 7th April, 2016

+ **MAC.APP. 291/2016& CM No.12904-06/2016**

SHRIRAM GENERAL INSURANCE CO LTD.

..... Appellant

Through: Mr. Sameer Nandwani, Adv.

versus

ASHOK KUMAR AGGARWAL AND ORS. ..... Respondents

Through: None.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On the claim petition (registered as MACT case No. 56/2011), instituted on 31.01.2011 filed by the first and second respondents herein (the claimants), seeking compensation for death of their bachelor son Avinash Aggarwal, aged 28 years at the relevant point of time, the tribunal held inquiry, clubbing it with other similarly placed cases arising out of motor vehicular accident that had occurred on 21.12.2010 at about 11 p.m. involving rash driving of the motor vehicle described as tanker bearing registration No. HR 55 2626 (the offending vehicle), concededly insured against third party risk with the appellant insurance company (insurer), which was impleaded as party respondent to the case in addition to driver and owner thereof. The tribunal, having found that the accident had

occurred due to negligence on the part of the driver of the offending vehicle, awarded compensation in the sum of Rs. 34,27,688/-with interest in favour of the claimants, directing the insurer to pay. The said amount includes Rs.32,92,688/- as dependency loss calculated on the basis of conclusion that the annual income of deceased was Rs. 2,58,250/- per annum, as declared by the income-tax return (ITR) submitted on 04.08.2010, the last one in a series of ITRs starting with one filed on 31.7.2005 each having been proved showing progressive rise in the income from business in which the deceased was engaged. The tribunal added the component of future prospects of increase to the extent of 50% to arrive at the loss of dependency.

2. By the appeal at hand, the appellant presses only two grounds; one, that the addition of future prospects was improper as the ITRs show quantum jump which is not believable and, second, that there was breach of terms and conditions of the insurance policy since the driver of the offending vehicle was not holding a valid and effective driving license and there was no valid permit held.

3. On being asked, the learned counsel for the appellant fairly conceded that the ITRs proved on record include first dated 31.07.2005, showing income of Rs. 86,000/-, second filed on 06.06.2006 showing income of Rs. 1,00,000/-, third filed on 27.07.2007 showing income of Rs. 1,00,000/-, fourth filed on 03.11.2008 showing income of Rs. 1,10,000/- and last filed on 04.08.2010 showing income of Rs. 2,58,250/-. There is nothing pleaded or shown in any manner on record that the declarations of income in the aforementioned ITRs was false. In these circumstances, the conclusion

reached by the tribunal that there was a progressive rise in the income cannot be questioned.

4. Having regard to the law laid down in *KR Madhusudhan vs. Adminstrative 2004 SC 689* and the view taken by this Court in *United India Assurance Co. Ltd. vs. Kamla & Ors. in MAC Appeal No. 548/2013* decided on 28th March, 2016 in the face of concrete and irrefutable evidence showing definitive trend of progressive rise in income, the contention of the insurance company cannot be accepted.

5. Learned counsel for the appellant fairly conceded that recovery rights have been granted on account of breach of terms and conditions of the insurance policy. In this view, interests of the appellant are duly protected and there is no case made out for total exoneration which even otherwise is not desirable since it would affect the third party rights [*National Insurance Company V. Swaran Singh* (2004) 3 SCC 297].

6. Thus, the appeal is found devoid of substance. It (with accompanying applications) is dismissed in *limine.*

7. Statutory amount, if made, shall be refunded.

R.K. GAUBA
(JUDGE)

APRIL 07, 2016
nk