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

Date of Decision: 7th April, 2016

\+ **MAC.APP. 298/2016& CM No.12954-56/2016**

SHRIRAM GENERAL INSURANCE CO LTD. ..... Appellant
Through: Mr. Sameer Nandwani, Adv.

versus

RAVI GOEL AND ORS. ..... Respondents
Through: None.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Smt. Shanti Devi, aged 66 years at the relevant point of time, died as a result of injuries suffered in a motor vehicular accident that had occurred on 21.12.2010 at about 11 p.m. involving negligent driving on the part of the driver of tanker bearing registration no. HR 55 2626 (the offending vehicle), insured against third party risk with the appellant insurance company (insurer) for the period in question. Her children (two sons and two daughters), all adults, filed an accident claim case (MACT case No. 57/2011) on 31.01.2011 under Sections 140 and 166 of Motor Vehicles Act, 1988 (MV Act) seeking compensation impleading the insurer, driver and owner of the offending vehicle.

2. The tribunal held inquiry clubbing the said case with other similarly placed accident claim cases relating to the same motor vehicular accident. By common judgment 22.12.2015, it was held that death had occurred on account of negligent driving of the offending vehicle. The tribunal assessed

the compensation in the sum of ₹ 3,46,120/- and awarded the same in favour of the claimants with interest and directed the insurer to pay though granting it recovery rights having held that there was breach of terms and conditions of the insurance policy inasmuch as the driver of the offending vehicle was not holding a valid or effective driving license and since there was no valid permit held.

3. The insurance company by this appeal questions the computation on the ground that the income of the deceased was wrongly assumed to be Rs. 6,000/- to calculate the loss of estate. It also submits that given the proof about the breach of terms and conditions of the insurance policy, it should have been exonerated from its liability to indemnify.

4. Having heard the learned counsel for the appellant, this Court finds no substance in any of the contentions. The income notionally assessed is closer home to the minimum wages payable at the relevant point of time and, therefore, the loss of estate as calculated cannot be grudged. The interest of the insurer is duly protected as it has been granted recovery rights. There is no case made out for exoneration since that would adversely affect the rights of the third party. *[National Insurance Company V. Swaran Singh* (2004) 3 SCC 297 & *United India Insurance Company Ltd. V. Lehru & Ors.* (2003 3 SCC 338]

5. The appeals (with accompanying applications) is dismissed in *limine.*

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

R.K. GAUBA
(JUDGE)

APRIL 07, 2016/nk