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

Date of Decision: 11th May, 2016

+ **MAC.APP. 581/2007**

SUMER SINGH CHAUHAN

..... Appellant

Through: Mr. O P Mannie, Adv.

versus

PANKAJ KUMAR & ORS.

..... Respondent

Through: Mr. Pradeep Gaur, Adv. for insurance

+ **MAC.APP. 582/2007**

PUSHPA

..... Appellant

Through: Mr. O P Mannie, Adv.

versus

PANKAJ KUMAR & ORS.

..... Respondent

Through: Mr. Pradeep Gaur, Adv. for insurance

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 02.09.2002, Sumer Singh Chauhan (first appellant in MAC.APP.No.581/2007) was driving two wheeler scooter bearing

registration No.DL 4S 8067 (the scooter) with his wife Pushpa (appellant in MAC.APP.No.582/2007) and their two children including son (Yash Chauhan) then aged seven years riding on the pillion. When the scooter had reached Maksoodpur area, a tempo bearing No.DDL-4716 (the offending vehicle) statedly came in a negligent manner from Mahipalpur side and collided against it resulting in the driver and pillion riders of the scooter falling down and sustaining injuries. As a result, Yash Chauhan, the minor son of the two appellants, died.

2. Three accident claim petitions were preferred, one (suit No.114/03) on account of death of Yash Chauhan and the other two (suit No,117/03 and 115/03) on account of injuries suffered by Sumer Singh Chauhan and Pushpa Chauhan respectively. In all the three accident claim cases brought before the motor accident claims tribunal, Oriental Insurance Co. Ltd. (insurer) was shown as a respondent party along with the owner and driver of the offending vehicle. Upon inquiry, in which Pushpa Chauhan and Sumer Singh Chauhan appeared as witnesses (PW1 and PW2), the tribunal, by common judgment rendered on 01.05.2007, returned finding to the effect that the accident had occurred due to negligence on the part of both the scooter driver and also the driver of the offending vehicle. The responsibility on the scooterist was fastened to the extent of 30%. The tribunal assessed compensation. In the case of death of the child an amount of Rs.2,25,000/- was awarded. In the case of injuries of Pushpa Chauhan compensation in the sum of Rs.19,500/- was awarded and for the injuries of Sumer Singh Chauhan compensation in the sum of Rs.38,330/- was awarded. The tribunal directed the insurer to pay with interest at 7% per

annum in each case, though in the case of death of Yash Chauhan and injuries of Sumer Singh Chauhan deduction was made to the extent of 30% on the basis of finding of contributory negligence. It is noted that the tribunal upheld the plea of the insurance company about breach of terms and conditions of the insurance policy and on that basis granted it recovery rights against the owner of the offending vehicle.

3. By these appeals, the finding of contributory negligence is questioned. In addition, the appellants submit that the rate of interest levied is inadequate.

4. It may be added here that an appeal has also been filed concerning the award on account of death of Yash Chauhan, the said appeal (MAC.APP.No.580/2007) having been heard and the judgment reserved to be separately pronounced with other similar cases of claims arising out of death of minor children.

5. Having heard both sides and gone through the record, this Court finds merit in the contention of the appellant that the conclusion reached by the tribunal as to contributory negligence was unwarranted. The tribunal seems to have been swayed by the fact that the scooterist had allowed three persons to travel with him on the pillion. It failed to bear in mind that two of the said pillion rides were minor children of the parties aged hardly seven and nine years respectively. There is nothing on record to show that the presence of an additional child on the scooter had contributed to the cause for accident. The evidence of PW1 and PW2 clearly bringing out the negligence on the part of the driver of the offending vehicle has gone unchallenged and unrebutted. The tribunal itself noted that in spite of

opportunity, the driver of the offending vehicle did not enter the witness box. Thus, in a case where the cause for accident is wholly and squarely that of the negligent driving of the offending vehicle, deduction on account of contributory negligence in the manner done was not called for. The finding and its consequence is thus set aside.

6. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*], the rate of interest is increased to 9% per annum from the date of filing of the respective petitions till realization.

7. The insurer shall be duty bound to deposit the requisite amount inclusive on account of the increase in the rate of interest and without any deduction on account of contributory negligence with the tribunal within 30 days. Upon such deposits being made, same shall be released to the claimants in terms of the impugned judgment. Needless to add the recovery rights already granted to the insurer shall inure in its favour even respecting the enhanced effect of the award.

8. Both appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 11, 2016
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