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

Date of Decision: 29th April, 2016

\+ **MAC.APP. 748/2013**

ICICI LOMBARD GENERAL INSURANCE CO LTD
..... Appellant

Through: Mr. Sandeep Jha, Adv.

versus

SH SUDAMA & ORS ..... Respondents

Through: Mr. Dilip Singh & Ms. Suman, Advs. for R-1 to 3

Mr. Kshitij Kumar, Adv. for R-5.

AND

\+ **MAC.APP. 506/2015**

POORAN LAL ..... Appellant

Through: Mr. Kshitij Kumar, Adv.

versus

ICICI LOMBARD GENERAL INSURANCE CO LTD & ORS
..... Respondents

Through: Mr. Sandeep Jha, Adv. for insurance company.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Sri Kishan @ Kishan Lal, 29 years, a bachelor died in a motor vehicular accident that occurred on 21.04.2008 at about 11:35 PM involving motor vehicle described as Mahindra Champion bearing registration no.DL-1LJ-3613 (the offending vehicle). His three junior siblings, two of whom were concededly minors, now first to third respondents in MAC appeal no.748/2013 (hereinafter referred to as "the claimants") instituted an accident claim case under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the M.V.Act) on 05.09.2008, it having been registered by the motor accident claims tribunal (the tribunal) as MACT case no.765/2008, *inter-alia*, on the averments that the offending vehicle was driven by Monu son of Ram Prasad (the driver), it being registered in the name of Pooran Lal (appellant in MAC appeal no. 506/2015) and insured against third party risk for the period in question with M/s ICICI Lombard General Insurance Company Ltd. (appellant in MAC appeal no.748/2013).

2. The tribunal held inquiry on conclusion of which it decided the claim case, by judgment dated 11.02.2013, upholding the case of the claimants that the death had occurred due to negligent driving of the offending vehicle by its driver (Monu). It awarded compensation in the sum of ₹6,87,396/- with interest at the rate of seven & half percent (7.5%) per annum from the date of filing of the petition till realization, the said amount being inclusive of ₹6,42,396/- calculated as loss of dependency in addition to ₹10,000/- each towards funeral expenses and loss to estate, ₹25,000/- towards loss of love & affection.

3. The insurer while admitting that the vehicle was insured against third party risk took the plea that there was breach of terms and conditions of the

insurance policy since driver was not holding a valid or effective license. A specific issue was framed in this regard which was answered in favour of the insurer. Thus, while being called upon to satisfy the award in favour of the claimants (third parties), the insurer was granted right to recover the said amount from the driver and owner of the offending vehicle.

4. By its appeal (MAC appeal no.748/2013), the insurer questions the computation of loss of dependency on the ground that since the deceased was a bachelor, one half (1/2) should have been deducted towards personal and living expenses as against one third taken into account by the tribunal. This contention must be upheld in view of dictum in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.,* (2009) 6 SCC 121.

5. Since the tribunal had assumed the notional income of ₹4723/-, loss of dependency comes to (4723/2) ₹2362/- per month. On the multiplier of 17, which was correctly adopted, the total loss of dependency is computed as (2362x12x17) ₹4,81,848/-, rounded off to ₹4,82,000/-.

6. It is, however, noted that the award under the non-pecuniary heads of damages granted by the tribunal is inadequate. Following the view taken by this court in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, the award under heads of loss of love and affection is increased to ₹1,00,000/- and those towards loss of estate and funeral expenses are increased to ₹25,000/-. Thus, the total compensation payable in the case comes to (4,82,000+1,50,000) ₹6,32,000/-.

7. It is also noted that the tribunal has awarded a lower rate of interest. 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 petition till realization.

8. The award is modified accordingly.

9. The tribunal had apportioned the award amongst the three claimants by specifying the awards, falling to their respective shares. Since the amount of compensation awarded has been modified, it is directed that the share of first claimant (₹1,00,000/-) as determined shall remain the same while the balance shall be distributed in the ratio of 2:1 in favour of second and third respondents.

10. The owner of the offending vehicle Pooran Lal (appellant in MAC appeal no.506/2015) had suffered the proceedings before the tribunal *exparte*. He has come up with the said appeal to question the finding about the breach of terms and conditions of the insurance policy mainly contending that the notice under Order 12 Rule-8 of the Code of Civil Procedure, 1908 (CPC) on which reliance was placed through the evidence of Mohit Raj Nagar (R3W1), Manager (Legal) of the insurance company had not been received by him. It is also his contention that the vehicle was actually driven by a person named Mohan Lal @ Rohit, and not by Monu (impleaded as first respondent in the claim petition) and further that the said Mohan Lal held a valid and effective license on the date of the accident.

11. The owner relies on the documents connected to the copy of the report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C) which was filed on record during the inquiry. He drew attention to the narration in the said report by the investigating police officer informing the criminal court where it was submitted that upon being served with notice under Section 133 of the M. V. Act, during the course of investigation into the first information report (FIR) that had been registered with regard to the accident, the owner Pooran Lal had taken the position that the driver engaged on the offending vehicle was Mohan Lal and further that upon investigation it was found that Mohan Lal held a valid or effective license. Reference is also made to the statements under Section 161 Cr.P.C of Pooran Lal and Mohan Lal as recorded during the investigation to such effect.

12. The above submissions of the appellant (in MAC appeal no.506/2015) are found to be unmerited. The reply to notice under Section 133 of the M.V.Act during the course of investigation by the police is only a claim. The statement under Section 161 Cr.P.C. recorded by the police during such investigation cannot be treated as substantive evidence. Having been served with notice of the said proceedings, it was well within his knowledge that the claimant's case was that the vehicle was being driven by Monu. The appellant Pooran Lal had due notice of the inquiry before the tribunal. He opted to remain away and suffer the proceedings *exparte*. Admittedly, Pooran Lal did not appear before the tribunal to introduce his defence that the averment about Monu was incorrect and that the vehicle was actually driven by the person named Mohan Lal. In these circumstances, with no defence having been set up, adduced or supported by any evidence, the story

of Mohan Lal being the driver cannot be entertained at this stage. The finding about Monu being the driver and he being negligent, thus, cannot be disturbed. In this view of the matter, the fact that Mohan Lal held valid or effective license would be in-consequential.

13. In view of above, the appeal of Pooran Lal (MAC appeal no.506/2015) is liable to be dismissed.

14. By order dated 14.08.2013 (in MAC appeal no.748/2013), the insurance company had been directed to deposit the awarded compensation with up-to-date interest with the Registrar General of this court within the period specified and out of such deposit, 75% was allowed to be released to the claimant.

15. Since the award has been modified as above, the Registrar General shall recalculate the amounts payable to the claimants in terms of the modified award and release the same from the balance lying in deposit, refunding excess, if any, to the insurer. Conversely, if any further amount is required to be paid, the insurer shall be obliged to deposit the same with the tribunal for its release to the claimants.

16. The statutory deposit, if made, shall be refunded.

17. The appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 29, 2016
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