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

Date of Decision: 19.05.2016

\+ **MAC.APP. 757/2013**

HDFC ERGO GENERAL INSURANCE COMPANY LTD

..... Appellant

Through Ms. Neerja Sachdeva, Adv.

versus

SAGIR AHMED & ORS

..... Respondent

Through Mr. Hitendra Sharma, proxy for R-1 & 2
Mr. Hamid Ali with Mr. Jitender Kumar, Adv. for R-3 & 4

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Nafis Ahmed, a bachelor, died in a motor vehicular accident that occurred on 06.04.2011, involving negligent driving of a motor vehicle bearing registration No.HR 55 K 3192 (offending vehicle), concededly insured against third party risk with the appellant insurance company (insurer). His parents, first and second respondents (claimants), instituted an accident claim case (suit No.252/11) on 05.07.2011 seeking compensation. The motor accident claims tribunal (tribunal), after inquiry, by judgment dated 22.04.2013, upheld the case of death having occurred due to negligent

driving of the offending vehicle. It awarded compensation in the sum of Rs.6,10,700/- within interest at 9% per annum calculating it thus :

1) Loss of dependency	*:*	*₹5,65,700/-*
2) Loss of love & affection	*:*	*₹25,000/-*
3) Funeral expenses	*:*	*₹10,000/-*
4) Loss of estate	*:*	*₹10,000/-*
Total	*:*	*₹6,10,700/-*

2. The insurer which has been burdened with the liability to pay is in appeal questioning the loss of dependency on the ground that in absence of proper proof of income, the minimum wages of non-matriculate were wrongly adopted and that, as per the ration card of the family (at page 317 of the tribunal's record), the age of the father and mother as on 01.07.2006 was 50 years and 45 years. It is argued that the tribunal misread the said document to conclude the age of the mother on the date of cause of action as 45 years and, thus, the multiplier of 14 adopted is wrong.

3. The insurer further pleads that since the driving license held by the third respondent who was driving the offending vehicle at the relevant point of time was only for light motor vehicle (LMV) and not for a commercial LMV as was necessary, its plea for exoneration should have been accepted. It is pointed out that during the inquiry, a second driving license was produced as issued by Regional Transport Officer (Fatehgarh) U.P. and, on that basis, the plea for exoneration was rejected. It is submitted that no opportunity was given for the said driving license to be verified.

4. *Per contra*, the claimants submit that the awards under the non-pecuniary heads of damages are inadequate.

5. Indeed, there is no reason why the pecuniary loss to estate should have been calculated on the basis of minimum wages of a non-matriculate. The deceased was a fruit seller, there being no proof of his educational status, the dependency loss had to be computed on the basis of minimum wages of Rs.6,422/-, as payable to an unskilled worker. The tribunal appears to have wrongly assumed the age of the mother to be 45 years. With regard to the entries in the ration card, it is noted that the father of the deceased was 55 years old and the mother was 50 years old on the relevant date. Thus, their average age being in the region of 52 years, the multiplier of 11 would apply. Consequently, deducting 50% towards personal & living expenses, the dependency loss comes to (6,422÷2 x 12 x 11) Rs.42,3,852 rounded off to Rs.4,25,000/-.

6. 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 Rs.1 lakh on account of loss of love & affection and Rs.25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case comes to (4,25,000 + 1,50,000) Rs.5,75,000/-.

7. The award is modified accordingly. It shall carry interest as levied by the tribunal. It is noted that the tribunal had divided the award equally amongst the parents. The modified award shall also be apportioned accordingly.

8. By order dated 21.08.2013, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General out of which 80% was allowed to be released to the

claimants in terms of impugned judgment of the tribunal, the balance be kept in fixed deposit receipt with UCO Bank, Delhi High Court branch for a period of six months to be renewed periodically.

9. The Registrar General shall now calculate the sums payable to the claimants and release the same with proportionate interest in their favour in terms of the aforementioned directions, refunding the excess, if any, with statutory deposit to the insurer. Conversely, if more amount is required to be paid, the insurer shall be obliged to deposit the same with the tribunal within 30 days of this judgment whereupon it shall be released with interest accordingly.

10. Mere fact that the driving license held by third respondent was not meant for commercial vehicles, cannot be taken as fundamental breach of the terms and condition of the policy. Thus, the finding rejecting the claim for exoneration for the insurer does not call for any interference.

11. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 19, 2016
VLD