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

Date of Decision: 23rd February, 2016

\+ MAC.APP. 432/2009

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD...... Appellant
Through: Mr. Rajat Brar, Adv.

versus

KAMLA BIST & ORS. ..... Respondents
Through: Mr. Bhupesh Narula, Adv. for R-1 to 4.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Hikmat Singh, aged 44 years, working as Security Assistant in Lok Sabha Secretariat, Parliament House, New Delhi suffered injuries in a motor vehicular accident that occurred on 27.05.2002 involving a motor vehicle bearing No.DL-2CP-1031 (the offending vehicle) which was admittedly insured against third party risk with the appellant Insurance Company. He preferred a claim petition under Section 166 read with section 140 of the Motor Vehicle Act, 1988 (MV Act) before the Motor Accident Claims Tribunal (Tribunal) on 08.08.2002**,** impleading the appellant insurance company as the second respondent in addition to Suryadeo Prasad, the driver cum owner of the offending vehicle (sixth respondent herein).

2. While the sixth respondent in his written statement denied any involvement of the offending vehicle, the appellant insurance company contested on the ground that the accident had occurred on account of

negligence on the part of the Hikmat Singh himself and further that the driver of the offending vehicle was not in possession of a valid driving licence and, thus, on account of breach of terms & conditions of the insurance policy, the appellant could not be directed to indemnify.

3. During the pendency of the inquiry into claim petition, Hikmat Singh died on 29.08.2006. His widow and other legal heirs (first to fifth respondents, hereinafter referred to as the claimants) made an application on 02.07.2007 under Order 22 Rule 3 of the Code of Civil Procedure, 1908 (CPC) seeking to be substituted so as to take over the claim case. The said prayer on their behalf was allowed and the claim petition was prosecuted thereafter by the claimants.

4. Noticeably, before his death, the original claimant Hikmat Singh had examined himself as PW-1. In addition he had examined Kushal Sarkar (PW-2), Executive officer, Lok Sabha Secretariat to bring on record documentary proof in relation to his status, employment, income and leave availed on account of injuries suffered in the accident. After the death of Hikmat Singh, the petition having been taken over by his legal heirs, no further evidence was led.

5. The proceedings were concluded on the basis of claim case prosecuted further by legal heirs of the original claimant (injured/victim) for seeking compensation for the injuries suffered by him. The tribunal by judgment dated 19.05.2009, modified by subsequent order dated 02.07.2009, awarded ₹ 10,66,020/- as compensation mainly on account of loss of income in the sum of ₹10,06,020/- in addition to expenditure on account of conveyance and special diet of ₹ 15,000/-, with further additions to the

effect of permanent disability to the extent of ₹25,000/- and compensation for loss of enjoyment and amenities of life in the sum of ₹20,000/-.

6. During the hearing on the appeal brought by the Insurance Company challenging the quantum of the compensation, learned counsel for the claimant fairly conceded that the compensation for the effect of permanent disability and loss of enjoyment and amenities of life being personal in nature, claims to that effect would not have survived after the death of injured victim and that compensation can be claimed only for whatever expenditure had been incurred as loss to the estate and on account of loss of income consequent to the injuries as indeed the expenditure incurred on the treatment, conveyance and special diet *etc*.

7. Leaned counsel for the claimants submitted that due to lack of proper legal advice, necessary evidence about the loss of estate could not be brought before the Tribunal and that the claimant may be allowed opportunity to lead further evidence. With the submission that the impugned judgment suffers from an error in proper calculation of the compensation, he joined in the prayer that it be set aside but prayed that the matter be remitted back to the tribunal for further inquiry and fresh adjudication.

8. The counsel for the appellant insurance company submitted that he has nothing to say on the prayer for additional opportunity for evidence to be granted.

9. In the facts and circumstances noted above, the appeal is allowed and the impugned judgment is set aside. The matter is remitted to the Tribunal for appropriate further proceedings in accordance with law in light of the submissions of the parties recorded above.

10. The parties shall appear before the Tribunal on 30.03.2016.

11. By order dated 04.11.2009, the appellant has been directed to deposit ₹1,00,000/- with the Registrar General of this Court within the period specified upon which the execution of the impugned award was stayed. By the said order the statutory amount of ₹25,000/- was directed to be kept in fixed deposit initially for a period of six months to be renewed thereafter till further orders.

11. By order dated 08.02.2010, the said entire amount of ₹1,25,000/- was directed to be released with accrued interest to the claimants in equal shares. In the facts and circumstances, the said amount shall be liable to be adjusted appropriately upon fresh determination of the compensation awardable in the case.

12. The appeal is disposed of in above terms.

R.K.GAUBA, J

FEBRUARY 23, 2016/afa