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

Date of Decision: 03.06.2016

\+ **MAC.APP. 733/2014 & CM Nos.13073/2014, 22707/2016**

THE NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through Mr. R K Tripathi, Adv.

versus

VEER SINGH & ORS. ..... Respondents
Through Mr. Zafar Sadique and Ms. Sunita Kumari, Advs. for R-1

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Mukesh Kumar, aged 36 years, a bachelor, died in a motor vehicular accident that occurred on 09.06.2012 at about 11.30 PM on account of negligent driving of motor vehicle bearing registration No.NL 02 D 6760 (offending vehicle), admittedly insured against third party risk with the appellant insurance company (insurer). His father, a widower (claimant) (now the first respondent in appeal) filed an accident claim case (suit No.437/12) on 17.12.2012 seeking compensation under Sections 166 & 140 of Motor Vehicles Act, 1988 (MV Act) impleading the insurer as a party respondent, in addition to driver and owner of the offending vehicle. On the basis of inquiry, the tribunal, by judgment dated 09.07.2014, upheld the case of death having occurred due to negligent driving of the offending vehicle.

It awarded compensation in the sum of Rs.12,82,500/- with interest at 9% per annum in favour of the claimant after directing the insurance company to pay.

2. The appeal at hand was filed by the insurance company to challenge the abovementioned award. By order dated 03.03.2016, it was directed to be shown in the regular list to come up on its own turn. On application (CM No.22707/2016) being moved by the first respondent (claimant) seeking early hearing, the file has been taken up today and with the consent of both the counsel for the appellant and the counsel for the respondent, the appeal is taken up for final hearing and disposal today itself.

3. During the course of arguments on the appeal, it is pressed by the insurer on two grounds; one, that the claimant father was not a dependent and, two, that the tribunal fell into error by adding the factor of future prospects of increase without any evidence showing possibility of progressive rise in income.

4. The arguments on both sides having been heard and the record of the tribunal having been perused, this Court finds both the contentions to be unmerited and thus liable to be repelled.

5. The claimant father is on record in his deposition as PW1, on the strength of his affidavit (Ex.PW1/A) that the deceased was contributing his entire income to the family which included an unmarried sister and a handicapped brother. It is noted that in spite of having reached the age of 36, the deceased was still unmarried. He had lost his mother earlier and was burdened with responsibilities towards not only his aging father but also his

junior siblings. In these circumstances, the objection to the financial dependency must be rejected.

6. While it is true that the father appearing as PW1 was unable to produce any document in the nature of educational qualification of the deceased or appointment letter where-under he was employed, the evidence of Vijay Kumar Barik (PW2), Executive (HR) V-Link Fleet Solutions Pvt. Ltd. leaves no room for doubt that the deceased was employed as a supervisor with the said company since 01.10.2011. It does appear that the period of employment with the said company was less than one year. But this does not mean that the deceased would not be entitled to any progressive rise in income. Given the nature of his employment with the said company, as brought out clearly by the evidence of PW2, *inter alia*, on the basis of pay slip (Ex.PW1/6) for the month of May, 2012, it is inherent in the terms and conditions of this engagement that he would be entitled to incremental increase in salary and allowances over the period. Thus, the inclusion of element of future prospects of increase on such irrefutable evidence cannot be grudged. [see judgment dated 28.03.2016 in MAC.APP. 548/2013 *United India Insurance Co. Ltd. v. Kamla & Ors*.]

7. In above view, the appeal is dismissed.

8. By order dated 12.08.2014, the insurance company had been directed to deposit entire awarded amount with accumulated interest with the Registrar General within the period specified and out of such deposit 50% was allowed to be released to the claimant, the balance kept in fixed deposit receipt with UCO Bank, Delhi High Court branch with provision for

renewal. The balance lying in fixed deposit shall also now be released to the claimant in terms of the judgment of the tribunal.

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

(R.K. GAUBA)
JUDGE

JUNE 03, 2016
VLD