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

Date of Decision: 11.05.2016

+ **MAC.APP. 750/2014 & CM 13464/2014**

**ICICI LOMBARD GENERAL INSURANCE
CO. LTD**

..... Appellant

Through: Ms. Suman Bagga and Mr. Pankaj
Gupta, Advocates

versus

SMT. SUSHILA DWIVEDI & ORS

..... Respondents

Through: Mr. Nikhilesh Kumar, Advocate for the
claimants

Mr. A.K. Mishra, Mr. Ajay Tiwari and Mr. Amit
Pandey, Advocates for R-6 & 7

+ **MAC.APP. 747/2014 and CM No.13457/2014**

ICICI LOMBARD GENERAL INSURANCE CO. LTD Appellant

Through: Ms. Suman Bagga and Mr. Pankaj
Gupta, Advocates

versus

NEERAJ KUMAR DWIVEDI & ORS

..... Respondents

Through: Mr. Nikhilesh Kumar, Advocate for the
claimant

Mr. A.K. Mishra, Mr. Ajay Tiwari and Mr. Amit
Pandey, Advocates for R-2 & 3

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 08.06.2013, Neeraj Kumar Dwivedi was driving a motor cycle bearing registration no.DL-3S-AP 8827 (motor cycle) on the pillion of which his brother Ajay Kumar Dwivedi was riding. At about 6.30 a.m., the motor cycle met with an accident involving Indica Car bearing registration no.UP-72P-9111 (car), concededly driven by Vijender Pratap (sixth respondent in MAC 750/2014 and the second respondent in MAC 747/2014), it being registered in the name of Rajinder Kumar Saroj (seventh respondent in MACA 750/2014 and third respondent in MACA 747/2014), admittedly insured against third party risk with ICICI Lombard General Insurance Co. (appellant in both the appeals), for the period in question. As a result of the collision, both Neeraj Kumar Dwivedi and Ajay Kumar Dwivedi suffered injuries, the latter dying in the consequence. Two accident claim cases were instituted before the Motor Accident Claims Tribunal(tribunal), one (suit no.255/2011) for compensation on account of injuries suffered by Neeraj Kumar Dwivedi and the other (suit no.284/2011) for compensation on account of death of Ajay Kumar Dwivedi, the second case having been brought by first to fifth respondents in MACA 750/2014 (claimants).

2. The tribunal held inquiry and, by a common judgment rendered on 12.05.2014, upheld the case of the claimants in both the cases that the

accident had occurred due to negligent driving of the car by Vijender Pratap. This finding has attained finality as it was not challenged.

3. In the death case, the tribunal awarded compensation in the sum of ₹30,60,564/- which includes ₹25,000/- each towards funeral expenses and loss of love and affection and Rs.10,000/- towards loss of estate besides ₹30,00,564/- on account of loss of dependency. In the case relating to the injuries, the tribunal awarded compensation in the sum of ₹55,000/-. Both the awards were passed with a direction to the insurer (appellant) to pay the compensation with interest at 9% p.a. from the date of filing of the respective petitions.

4. It appears while contesting the claim cases, the insurer had taken the plea that the car in question was being driven as a taxi and that the driver Vijender Prasad held a driving licence which had not been endorsed for purposes of commercial purposes. On this, the insurer pleaded breach of terms and conditions of the insurance policy and sought exoneration. This plea, it appears, did not receive the due consideration by the tribunal.

5. By the appeals at hand, the insurance company reiterates its defence about the breach of terms and conditions of the insurance policy in both the cases. In the case of death, it further questions the award on account of loss of dependency. It submits that the income of ₹18,522/- p.m. was assumed by the tribunal only on the basis of evidence showing that the deceased had received an offer of appointment (Ex. PW2/2) from Uttar Pradesh Police Recruitment Board against the post of constable. It is submitted that since the deceased had not actually joined the said employment, the income could

not have been assessed on such basis. In the same context, it also takes exception to the element of future prospects of increase having been factored in to the extent of 50%. The insurance company also raises the issue of the multiplier submitting that because the claim was brought essentially by the parents, the multiplier should have been chosen in accordance with the age of the claimants rather than that of the deceased as done by the tribunal.

6. The argument as to the assessment of income of the deceased only needs to be noted and rejected. It is not a case where the deceased was only an aspirant for a Government job. He had actually offered his candidature on the basis of qualifications possessed and had cleared the selection process which had matured to the extent of he having been offered the appointment against the post of constable in UP police. He was on the threshold of joining the said service which would have resulted in he receiving a salary in the total sum of ₹18,522/- p.m. This potential income cannot be ignored or rejected as the basis on which loss of dependency had to be worked out. Given the fact that his life came to an untimely end, when he was on the onset of a long career, at a young age of 21 years, the future prospects of increase in the income, which is inherent to all government employees, cannot be kept out.

7. But, there is merit in the contention of the insurance company on the issue of multiplier. It is well settled that the multiplier has to be chosen as per the age of the claimants or that of the deceased whichever is higher. [*G.M. Kerela SRTC vs Susamma Thomas* (1994) 2 SCC 176; *U.P.S.R.T.C. vs Trilok Chandra* (1996) 4 SCC 362]. The tribunal's record includes copy of the ration card (mark A) issued in January 2010 wherein the age of the

father is shown as 41 years and that of the mother as 40 years. Since the death had occurred on 08.06.2010, the age of the parents would be 51 years and 50 years respectively. This would mean the average age would be roughly 50 years. Thus the multiplier of 13 would apply. On the basis of above findings, after deducting 50% towards personal and living expenses, (since the deceased was a bachelor), the loss of dependency is recalculated as ($\text{₹}18,522/- \times 150/100/2 \times 12 \times 13$) $\text{₹}21,67,074/-$ rounded off to $\text{₹}21,70,000/-$.

8. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, compensation on account of loss of love and affection is increased to $\text{₹}1$ Lakh and awards towards loss of estate and funeral expenses are granted at $\text{₹}25,000/-$ each. Therefore, the total compensation in the case of death is computed as ($\text{₹}21,70,000/- + 1,50,000/-$) $\text{₹}23,20,000/-$. Needless to add, it shall carry interest as levied by the tribunal.

9. It is noted that the tribunal had specified the shares of the different claimants in terms of the amount of money. By order dated 20.08.2014, while the insurance company was directed to deposit the entire awarded amount with accumulated interest with the Registrar General of this court within the specified period, 60% was allowed to be released to the claimants in terms of the impugned judgment, the balance kept in fixed deposit with UCO Bank, Delhi High Court Branch, New Delhi for a period of one year with provision for renewal. Since the award has been reduced, it is directed that the amounts already paid in favour of the second to fifth respondents

shall be treated as their shares in the compensation, the entire balance now payable to go to the first respondent (mother of the deceased).

10. The Registrar General shall calculate the amount payable to the said claimant and release the same forthwith refunding the balance deposited in excess to the insurance company.

11. Coming to the breach of the terms and conditions of the insurance policy, the fact that the license did not bear the requisite endorsement for a commercial vehicle cannot be treated as a fundamental breach or to have contributed to the cause of accident. Therefore, there is no case made out for exoneration or grant of recovery rights in favour of the insurer. [see *National Insurance Company V. Swaran Singh* (2004) 3 SCC 297 and *United India Insurance Company Ltd. V. Lehu & Ors.* (2003 3 SCC 338)]

12. Statutory amounts in both the appeals, if deposited, shall be refunded.

13. Both appeals and the pending applications are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 11, 2016
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