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

Date of Decision: 03rd May, 2016

\+ **MAC.APP. 764/2014 & CM nos. 13730/2014 , 6708/2016**

THE NEW INDIA ASSURANCE CO LTD ..... Appellant

Through: Mr. J. P. N. Shahi, Adv.

versus

SONU @ SUDAMA & ORS ..... Respondents

Through: Mr. Narender Malawaliya, Adv. for LR's of claimant.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The claim petition (suit no.86/11/09) was preferred by Sonu @ Sudama on 04.02.2009 before the motor accident claims tribunal (the tribunal), invoking the provision contained in Sections 166 & 140 of the Motor Vehicles Act, 1988 (the M.V.Act) seeking compensation for injuries suffered by him on account of motor vehicular accident that occurred on 15.12.2008, involving negligent driving of a bus bearing registration no.DL-1PB-4708 (the offending vehicle), admittedly insured against third party risk for the period in question with the appellant/insurance company (the insurer). The tribunal, having held inquiry, by judgment dated 07.06.2014, awarded compensation in his favour calculating it thus:-

Compensation for medical expenses	:₹2003/-
Compensation for pain & suffering	:₹2,00,000/-
Compensation for special diet and conveyance	:₹75,000/-
Compensation for loss of income during Treatment	:₹1,00,000/-
Compensation for loss of future income	:₹3,54,844/-
Compensation for loss of amenities and enjoyment of live	:₹1,00,000/-
Compensation for disfigurement	:₹50,000/-
Loss of marriage prospects	:1,50,000/-
Total	₹10,31,847/-

2. Since the insurance cover was admitted, the appellant was directed to satisfy the award.

3. The insurance company has challenged the award by the present appeal. The claimant, however, died on 17.10.2014 and upon this information being brought on record on the application of the insurer, the legal heirs of the claimant have since been substituted in his place, they including parents and four siblings.

4. Against the above backdrop, the insurance company presses the appeal only on one ground, namely that the awards on account of pain & suffering, loss of amenities and enjoyment of life, disability and loss of marriage prospects being personal in nature cannot survive. It is submitted that the awards under the said heads may be set aside, the insurance company conceding the liability to pay the compensation granted under other heads.

5. The learned counsel for the legal heirs of the claimant, since substituted in his place on account of his death, fairly concedes that the above mentioned four heads of non-pecuniary heads of damages being personal in nature do not survive on account of his death. Therefore, the compensation awardable in this case has to be reduced. In these circumstances, the award is reduced to (10,31,847-2,00,000-1,00,000-50,000-1,50,000) ₹5,31,847/-, rounded off to ₹5,32,000/-. Needless to add, the amount of compensation thus found payable shall carry interest as levied by the tribunal by directions in (para 24 of) the impugned judgment.

6. It is noted that all siblings of the deceased, impleaded as his legal heirs, are major and well settled in life. In these circumstances, entire compensation payable in this case, in terms of the award modified as above with proportionate interest shall be payable only in favour of the mother Smt. Shanti Devi.

7. By order dated 25.08.2014, the appellant/insurance company had been directed to deposit the entire awarded amount with up-to-date interest with accumulated interest with the Registrar General and out of the same 70% was allowed to be released to the claimant. Since the claimant died before the said order could be enforced, no amount has been released till date. The Registrar General shall now calculate the amount payable to Smt. Shanti Devi, the mother/legal heir of the deceased/claimant and release the same in her favour, depositing 50% of the said amount in fixed deposit in a nationalized bank of her choice for a period of 5 years with a right to draw monthly interest, the balance to be remitted into her savings bank account for immediate use.

8. The balance deposited in excess of its liability with statutory amount, if deposited, shall be refunded to the insurance company.

9. The appeal (with applications) is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 03, 2016
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