

\$~8

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

Date of Decision: 21st March, 2016

+ **MAC.APP. 876/2013**

UNITED INDIA INSURANCE CO LTD Appellant

Through: Mr. K. L. Nandwani, Adv.

versus

SEEMA DEVI AND ORS Respondents

Through: Mr. Anshuman Bal, Adv. for R-1 to 6.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Siri Ram died as a result of injuries suffered in a motor vehicular accident that occurred at 03:00 AM on 26.12.2007 when a three wheeler scooter (TSR) bearing registration no.DL-1RH-1235 in which he was travelling collided against a stationary truck. He died as a result of injuries suffered. It may be added that his mother Jamna Devi who was also co-passenger suffered injuries. Two claim cases, one for injuries suffered by Jamna Devi and, the other, on account of death of Siri Ram came to be filed under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act). In the death case registered as suit no. 425/2008, the insurance company was impleaded as second respondent, it being the insurer against the third party risk for the TSR in question, this in addition to its driver Ramesh Chand

(third respondent before the tribunal), and its owner Hari Chand (first respondent before the tribunal). The insurance company took the plea during inquiry that there was breach of terms and conditions of the insurance policy as the driver was not holding a valid or effective driving license, his license having expired on 05.02.1998 and it not having been renewed till 30.01.2008, after the accident.

2. The tribunal awarded compensation in the sum of ₹14,90,355/- which included ₹1,00,000/- each towards loss of love & affection and loss of consortium and ₹25,000/- each towards funeral expenses, besides ₹12,65,355/- on account of loss of dependency. It directed the insurance company to pay with interest at the rate of nine percent (9%) per annum from the date of filing of the petition, though in view of the breach of terms and conditions of the insurance policy granting recovery rights against the insurer/insured.

3. The learned counsel for the insurance company has pressed the appeal on three grounds first, that instead of being granted recovery rights it should have been fully exonerated; second, that the future prospects were wrongly added as the deceased was in private employment; and third that the multiplier adopted by the tribunal is wrong as the age of the deceased was 40 (forty) years 9 (nine) months in as much as he was born on 25.03.1967, death having occurred on 26.12.2007, in which view the multiplier of 14 would have been the appropriate one.

4. The argument that the future prospects could not have been added because the deceased was in a private employment is wholly meritless. The

facts noted by the tribunal (in para 13) clearly show that the deceased was in regular employment, though in a private company but in a time scale of Rs.2600-100-5100/- with terms and conditions of the said engagement similar to those which are available to workers in public service. The employer company has even mentioned the age of superannuation (60 years) on the same lines as in the government service. The terms and conditions of the employment further demonstrate that the employee (the deceased) was earning progressive rise in the salary and allowances. With such material having been pleaded and proved, there was hardly any case for the insurance company to come up with grievances against the future prospects, that too with reference to the judgments in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 and *Reshma Kumari V. Madan Mohan* (2013) 9 SCC 65.

5. Since the deceased was 40 years 9 months old at the time of death, indeed his age at the relevant point of time was closer to the age bracket 41-45 referred to in the case of *Sarla Verma* (supra) which attracts the multiplier of 14. This would be a view in line with the one taken by this court in MAC APP 636/2009 (*Oriental Insurance Co. Ltd. v. Rekha Vashisht & Ors.*) decided on 18/02/2016.

6. But, as pointed out by the learned counsel for the claimants, the tribunal did not accept the salary of ₹7970/- as proved on the basis of salary certificate (Ex.PW3/1). It deducted ₹750/- per month payable towards conveyance allowance. Since the said allowance is also to the benefit of the employee, it resulting in corresponding savings to him from his other earnings, following the consistent view taken by this court (see MAC

Appeal No. 1210/2012 *Shakuntla Gautam vs. Ravinder Kumar & Ors.* decided on 17.03.2016), the loss of dependency has to be worked out on the basis of ₹7,970/- as the income, though on the multiplier of 14.

7. The deceased left behind six dependants. Therefore, one fourth has to be deducted towards personal and living expenses. The monthly loss of dependency comes to $(7970 \times 3 \div 4)$ ₹5977.50, rounded off to ₹5978/-. Thirty percent (30%) has to be added towards future prospects of increase. The loss of dependency, therefore, has to be worked out on the basis of multiplicand of $(5978 \times 130 \div 100)$ ₹7,772/-. The total loss of dependency is computed at $(7,772 \times 12 \times 14)$ ₹13,05,696/-, rounded off to ₹13,06,000/-.

8. It is noted that the tribunal did not make any award for loss of estate. An amount of ₹25,000/- is added under this head, in addition to the awards already made for loss of love & affection, loss of consortium and funeral expenses. Thus, the total compensation payable in the case is $(13,06,000 + 1,00,000 + 1,00,000 + 25,000 + 25,000)$ ₹15,56,000/-.

9. The learned counsel for the appellant at this stage rose up to submit that the compensation ought not be increased as there is no appeal by the claimants. He has been reminded of the duty of this court to ensure that just compensation is awarded. Since it is the insurance company which brought the appeal at hand raising questions, *inter-alia*, about the computation, the issue is open and at large. In these circumstances, the compensation is increased to ₹15,56,000/- in favour of the claimants. It shall carry interest as levied by the tribunal.

10. The grievance about non-grant of the plea of exoneration is wholly misplaced. In view of the settled law on the subject, the insurance company should discharge its statutory responsibility and seek reimbursement for which recovery rights have already been granted to it.

11. By order dated 27.09.2013, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General and out of the same eighty percent (80%) was allowed to be released, balance kept in FDR. The Registrar General shall release the balance to the claimants forthwith. The insurance company is directed to deposit the enhanced portion of the compensation with the tribunal within 30 days of this order which shall thereafter be released to the claimants.

12. The appeal is disposed of in above terms.

**R.K. GAUBA
(JUDGE)**

MARCH 21, 2016
ssc