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

Date of Decision: 18.05.2016

\+ MAC.APP. 883/2013

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

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

versus

NEETU MISHRA & ORS ..... Respondents

Through: Mr. S.N. Parashar and Mr. Surinder Singh, Advocates

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Vijay Shankar, then 36 years in age, a practicing advocate by profession, died as a result of the injuries suffered in a motor vehicular accident that occurred on 25.02.2012 involving negligent driving of a motor vehicle described as Vikram, bearing registration no.DL-ILP-0517 (offending vehicle). His widow and two minor children, first to third respondents (claimants), instituted an accident claim case (MACT 202/12) on 27.04.2012, impleading the appellant insurance company (insurer) and

driver-cum-owner of the offending vehicle as parties. It is admitted case of the appellant (insurer) that the offending vehicle was insured against third party risk for the period in question with it.

2. The tribunal upheld the case of the claimants about negligent driving of the offending vehicle having resulted in the death and, by judgment dated 23.07.2013, awarded ₹29,91,350/- as compensation with interest at the rate of 7.5% p.a. from the date of filing of the petition, the said amount being inclusive of ₹25,000/- towards funeral expenses, ₹10,000/- towards loss of estate and ₹1 Lakh towards loss of care and guidance (love and affection) besides ₹1 lakh towards loss of consortium. The claimants had also proved medical expenditure in the sum of ₹3,56,350/- which was added to the compensation awarded.

3. The insurer which was burdened with the liability to pay has come up in appeal questioning the award on the ground that the income was wrongly assessed. This contention needs only to be noted and rejected in as much as the income was computed by the tribunal on the basis of income tax return (ITR) for the assessment year 2010-2011. Noticeably, the said ITR was submitted to the Income Tax Department by the deceased himself prior to the accident. The ITR for the subsequent period could not be filed since by the time it became due, the death had occurred. In these circumstances, the calculation of loss of dependency cannot be faulted.

4. As pointed out by the counsel for the claimants, the award of ₹10,000/- towards loss of estate is inadequate. Following the view taken in

Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma, (2015) 9 SCC 150*, it is increased to ₹25,000/-.

5. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.].

6. The award is modified accordingly.

7. By order dated 27.09.2013, the insurance company had been directed to deposit the entire awarded amount within the period specified and, out of the same, 70% was allowed to be released, the balance kept in fixed deposit receipt with the UCO Bank, Delhi High Court Branch, New Delhi. The Registrar General shall now take steps to release the same as well to the claimants. As a result of the modification ordered above, the insurance company will be obliged to pay more. It shall deposit the requisite amount with the tribunal within 30 days which in entirety shall be paid to the widow (first respondent).

7. The statutory deposits, if made, shall be refunded.

8. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 18, 2016
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