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

Date of Decision: 02nd May, 2016

\+ **MAC.APP. 955/2013**

FUTURE GENERALI INDIA INSURANCE CO. LTD. ..... Appellant

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

versus

SMT KRISHNA DEVI & ORS. ..... Respondents

Through: Ms. Amandeep Kaur and Ms. Aishwarya Saluja, Advs. for R-1
Mr. Sandeep Gupta, Adv. for R-3 & 4

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Sunil Lakra, aged 30 years suffered injuries in a motor vehicular accident that occurred on 26.06.2012 involving negligent driving of truck bearing registration No.UP 17C 5190 (offending vehicle) and died as a result. His wife and minor son (first and second respondents) instituted an accident claim case (MACT no.260/12) on 21.09.2012, on their behalf and on behalf of third and fourth respondents (collectively described hereinafter as "the claimants"). In the claim petition, the appellant insurance company (insurer) was impleaded as a respondent in addition to the driver and owner of the offending vehicle. The tribunal held inquiry and, by judgment dated

24.09.2013, upheld the case that the death had occurred due to negligent driving of the offending vehicle. It awarded compensation in the sum of 25,80,000/- calculating it thus :

Pecuniary damages :

1) Loss of dependency	-------------	Rs. 22,95,000/-
2) Funeral charges	-------------	Rs. 25,000/-
3) Loss of Estate	-------------	Rs. 10,000/-
4) Loss of consortium	-------------	Rs. 1,00,000/-
5) Loss of love, company and affection etc.	-----------	Rs. 1,00,000/-
6) Loss of gratuitous services	------------	Rs. 50,000/-
Total	=	Rs. 25,80,000/-

2. The insurer was directed to satisfy the above mentioned award with interest at 9% per annum from the date of filing of the petition.

3. The insurance company, by the appeal at hand, questions the assumption of the tribunal that the income of the deceased was ₹15,000/- per month. Having heard both sides and having gone through the tribunal's record, this Court finds substance in the contention of the insurance company.

4. It had been claimed before the tribunal that the deceased was engaged in a business of property dealing and earning ₹25,000/- per month. The tribunal assumed the income of ₹15,000/- per month. There is no basis to the said conclusion. The returning of finding with reference to some other case, without discussion of its facts or drawing a parallel, was not correct, particularly where the tribunal also noted that the petitioners had failed to produce any proof of occupation, income or even educational qualifications.

5. In these circumstances, there is no escape from calculation being made as to loss of dependency on the basis of minimum wages (₹7,020/- per month). Since the number of dependants was more than four, the personal & living expenses have to be deducted to the extent of 1/4th and keeping in view the age of the deceased, the multiplier of 17 would apply. Therefore, the loss of dependency is recomputed as (7,020 x 3 ÷ 4 x 12 x 17) ₹10,74,060/- rounded off to ₹10,75,000/-.

6. It is noted that the tribunal awarded the non-pecuniary damages which are not in accord with the awards being made in such cases. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, compensation in the sum of ₹1 lakh each on account of loss of love & affection and loss of consortium and ₹25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case is computed as (10,75,000+ 2,50,000) ₹13,25,000/-.

7. The award is modified accordingly. It shall carry interest as levied by the tribunal.

8. The tribunal apportioned the award by specifying the amounts in favour of the respective claimants. By order dated 25.10.2013, the insurance company had been directed to deposit the entire awarded amount with the Registrar General within the period specified and upon such deposit made 80% was allowed to be released in terms of the impugned judgment, the balance kept in fixed deposit receipt with UCO Bank, Delhi High Court branch initially for a period of six months to be renewed periodically.

9. In the given facts where the award has been modified, it is directed that the amounts already released in favour of second to fourth respondents shall be treated as their shares. The balance, if any, under the modified award, shall be payable only to the first respondent (the wife).

10. The Registrar General shall now calculate the sums payable to the claimant and release the same with proportionate interest in her favour in terms of the aforementioned direction, refunding excess, if any, with statutory deposit, if made, to the insurer.

11. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 02, 2016
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