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

Date of Decision: 23rd March, 2016

\+ **MAC.APP.1028/2011**

SHRIRAM GENERAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. Pankaj Seth & Mr. Shoumik Mazumdar, Advs.

versus

RAJINDER KAUR & ORS ..... Respondents
Through: None.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Joginder Singh, 79 year old person, died as a result of injuries suffered in a motor vehicular accident that occurred at about 11.45 a.m. on 19.7.2010 involving motorcycle bearing No. DL 9SAE 0734 (the offending vehicle) which was admittedly insured against third party risk with the appellant company (insurer). A claim petition was filed under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) before the motor accident claims tribunal (the tribunal) which registered it as case no. 399/2010. In the said case, besides the insurer, driver and owner of the offending vehicle were impleaded as respondents, they now being fifth and sixth respondents before this Court. The claimants (first to fourth respondents in the appeal) led evidence and on that basis the tribunal passed judgment dated 01.09.2011, awarding compensation in the sum of

₹ 3,51,122/- which includes ₹ 1,40,000/- under the heads of non-pecuniary damages besides ₹ 2,11,122/- towards loss of dependency.

2. The grievance of the insurer in appeal concerns the calculation of loss of dependency and also on the denial of recovery rights, this with reference to its plea that the driver of the offending vehicle was not holding a valid driving license.

3. On the first contention, this Court finds merit in the appeal. The claimants had not shown any clear proof of income. Thus, the income was notionally assessed at ₹ 5,278/- per month it being the rate of minimum wages. The tribunal deducted 1/3rd towards personal and living expenses on the reasoning that the deceased would have been saving 1/3rd of his income. This would have a reflection on the loss of estate. Primarily it was the wife (first claimant) who was dependent and, therefore, the deduction under the head of personal & living expenses should have been made to the extent of 50%. In this view, the loss of dependency comes to ₹ (5278÷2) ₹ 2639/- per month. Having regard to the age (79 years), the loss of dependency has to be worked out on the multiplier of 5. Therefore, the total loss of dependency is computed as ₹ (2639 X 12 X 5), ₹ 1,58,340/- rounded off to ₹ 1,59,000/-. Adding the amount of ₹ 1,40,000/- awarded by the tribunal under the non-pecuniary heads of damages, the total compensation in the case comes to ₹ (1,59,000 + 1,40,000) ₹ 2,99,000/- rounded off to ₹ 3,00,000/-. The award is reduced accordingly. Needless to add, it shall carry interest as levied by the tribunal and shall be apportioned in the manner done in the impugned judgment.

4. On the question of breach of terms and conditions of the policy, all that the insurer has to show is the pleadings to the effect that the driver was prosecuted for offence under Section 3 read with Section 181 of the MV Act on the allegations that he was not holding a valid or effective driving licence. Prosecution on those allegations is one thing and conviction on such allegations is another. No evidence confirming the afore-said facts has been adduced. In these circumstances, the plea for recovery rights to be granted has to be rejected.

5. By order dated 21.11.2011, the insurer was directed to deposit 75% of the awarded amount with upto date interest with State Bank of India, Tis Hazari Courts Branch, whereupon the execution was stayed. By order dated 07.09.2012, the share of the first claimant was released. The tribunal is directed to now calculate the amount payable to the claimants in terms of the modified award as above and release the same from the balance in the amount deposited. If there is any further amount to be paid, the appellant shall deposit the same with the tribunal within 30 days. Conversely, if the amount has been deposited in excess, the same shall be refunded to the insurer.

6. The appeal stands disposed of in above terms.

7. Statutory deposit, if made, shall be refunded.

R.K. GAUBA
(JUDGE)

MARCH 23, 2016
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