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

Date of Decision: 20.05.2016

\+ MAC.APP. 321/2015 and CM No.6251/2015 and 6702/2016

RELIANCE GENERAL INS CO LTD ..... Appellant

Through: Ms. Shantha Devi Raman, Advocate

versus

SHOBHA RANA & ORS ..... Respondents

Through: Mr. Manoj K. Mishra and Mr. Sandeep Kumar Dwivedi, Advocates for R-1 & 2

Mr. Munazir Hsan, proxy counsel for R-5 & 6

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Amit Kumar Rana @ Amit Kumar Nak, aged 29 years, employed as a house keeping supervisor with Anila Hotels suffered injuries in a motor vehicular accident that occurred on 26.12.2013, statedly involved in a negligent driving of a motor vehicle described as Hydro Crane bearing registration no.HR-99BN-2181 (offending vehicle) and died in the consequence. An accident claim case (suit no.D/182/14) was instituted on 08.01.2015 by his dependent family members (claimants) on 08.01.2015 by his dependent family members (claimants), now first to fourth respondents in appeal. In the said accident claim case, the appellant insurance company

(insurer) was impleaded as a party, it having concededly issued an insurance policy against third party risk for the period in question for the offending vehicle; this, in addition to driver and owner thereof.

2. The tribunal held inquiry and, by judgment dated 08.01.2015, upheld the case of the claimants that death had occurred due to negligent driving of the offending vehicle. It awarded compensation in the sum of Rs.36,40,000/- with interest in favour of the claimants and directed the insurer to pay.

3. By the appeal at hand, the insurer questions the finding on the issue of negligence submitting that eye witness, Vinod (PW-3) was not reliable and therefore conclusion to such effect could not have been reached. The insurance company also questions the addition of future prospects of increase to the extent of 50% arguing that the deceased was not in a permanent job.

4. Having heard the counsel for the appellant, this court finds no substance in either of the two contentions. The evidence of the eye witness, Vinod (PW-3) has to be seen in the light of the facts and circumstances regarding which evidence was gathered by the police during investigation of the corresponding criminal case. The police had submitted the accident information report (AIR) accompanied by copy of the report under Section 173 of the Code of Criminal Procedure, 1973 (Cr. PC) which clearly brings out the fact that the offending vehicle and the motor cycle were found in accidental state at the scene when the investigang police officer reached there. In these circumstances, mere fact that PW-3 would not remember the particulars of the offending vehicle during his oral testimony is

inconsequential. There is no reason, therefore, for the finding on the issue of negligence to be disturbed.

5. The evidence adduced by the claimants clearly showed that the deceased was a regular employee of the hotel. The fact as to whether he was in temporary engagement of service is of no import. In these circumstances, the addition of future prospects cannot be grudged.

6. The insurance company had been directed by order dated 08.05.2015 to deposit the entire awarded amount with the UCO Bank, Delhi High Court Branch, New Delhi which was ordered to be kept in fixed deposit receipt for a period of one year to be renewed from time to time. The said amount shall now be released to the claimants in terms of the impugned judgment / award. The statutory amount, if deposited, shall be refunded.

7. The appeal is dismissed. The pending applications consequently also stand dismissed.

R.K. GAUBA
(JUDGE)

MAY 20, 2016
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