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

Date of Decision: 30.05.2016

\+ MAC.APP. 1142/2012 & CM No.18415/2012

ICICI LOMBARD GENERAL INSURANCE CO. LTD. .. Appellant

Through: Ms. Suman Bagga, Advocate

versus

SMT. SANTOSH & ORS ..... Respondents

Through: Mr. C.K. Gola, Adv.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Rajesh Kumar, aged 45 years, earning his livelihood from a private service, suffered injuries in a motor vehicular accident that occurred on 06.04.2008 at about 10.30 a.m. involving motorcycle bearing registration No. DL 3S AK 4453 (motorcycle) driven by him on one hand and a bus bearing registration No. HR 69 5523 (the bus) of Haryana Roadways on the other, the latter vehicle admittedly insured against third party risk for the period in question with the appellant insurance company (insurer). As a result of injuries, he died leading to an accident claim case (MACT Suit No. 339/2010) being instituted on 22.10.2008 by first to fifth respondents (claimants), they being his dependent family members. In the claim case, it

was pleaded that the accident had occurred due to negligence on the part of the bus driver who had allowed the bus to remain stationary in the middle of the road without any caution sign having been applied. This plea was accepted by the tribunal on the basis of evidence led, primarily the oral testimony of Saurabh (PW-2), *inter alia,* adduced on the basis of his affidavit (Ex.PW2/A). The tribunal awarded compensation in the sum of ₹ 22,93,000/- with interest @ 7.5% per annum from the date of filing of the petition till realization, which amount includes ₹ 22,68,000/- towards loss of dependency calculated on the basis of income assessed to be in the sum of ₹ 12,000/- per month on which the element of future prospects of increase to the extent of 50% was added.

2. By the appeal at hand, the insurer questions the finding on the issue of negligence submitting that the sequence of events as have been brought on record reveal the possibility of contributory negligence on the part of the deceased motorcyclist of which due discount should have been given. The insurer also questions the income and loss of dependency on the ground that the calculations reached by the tribunal are unfounded. *Per contra,* the claimants argue through their counsel that the non-pecuniary heads of damages awarded by the tribunal and the rate of interest levied are unduly low and inadequate.

3. Having heard both sides and having gone through the record, the plea of contributory negligence must be rejected. The word of PW-2 Saurabh has not been countered by any evidence to the contrary. His evidence clearly shows that the bus has been allowed to be stationary in the middle of the road without any caution sign having been applied. Noticeably, the bus

driver did not even enter the witness box. In these circumstances, the finding on issue of negligence returned by the tribunal does not call for any interference.

4. The finding about the income was returned by the tribunal on the basis of presumption. The counsel for the claimants fairly submitted that further evidence is required to be adduced to bring home the income of ₹ 20,000/- which the deceased was earning from private employment. This further evidence would include the expenditure which he was incurring on the family and the savings occurring to the family. The claimants, thus, join the insurer in requesting the matter to be considered afresh and for such purposes submit that opportunity be given for further evidence to be adduced.

5. In the facts and circumstances, the appeal is partly allowed. While confirming the findings on the issue of negligence, the matter to the extent it requires to be inquired into for appropriate award of just compensation to be granted is remitted to the tribunal for further inquiry and fresh adjudication. During such further inquiry, the claimants will be entitled to lead further evidence which, needless to add, would be subject to the right of the parties which contest to cross-examine the additional witnesses and also lead evidence in rebuttal. The parties shall appear before the tribunal on 29th July, 2016.

6. By order dated 31.10.2012, the insurance company had been directed to deposit 75% of the awarded amount with upto date interest which was directed to be held in fixed deposit receipt. By order dated 13.02.2013,

50% of the awarded amount was released to the claimants from the deposit thus made. The balance lying in deposit shall presently be refunded to be insurance company with statutory deposit, if made. The amount already received by the claimants shall be subject to further directions in light of the fresh adjudication to be rendered by the tribunal.

7. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 30, 2016
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