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

Date of Decision: 09th May, 2016

+ **MAC.APP. 896/2014**

RELIANCE GENERAL INSURANCE CO LTD Appellant

Through: Mr. Rajeev M. Roy, Adv.

versus

SURESH KUMAR & ORS Respondents

Through: Mr. Sunil Kr. Verma, Adv. for R-1 & 2.

Mr. C. P. Malik, Adv. for R-3 & 4.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Renu Bai, employed as a constable in Delhi Police, a bachelor aged 23 years at the relevant point of time, died in a motor vehicular accident that occurred on 08.05.2011, involving negligent driving of a motor vehicle described as a tractor Eicher bearing registration no.HR-05M-2466 (the offending vehicle) in which respect the appellant/insurance company (the insurer) had admittedly issued an insurance policy against third party risk for the period in question. Her parents (first & second respondents/the claimants) instituted an accident claim case (MACP petition no.34/2012) on 03.02.2012 seeking compensation impleading the insurer, driver and owner of the offending vehicle, as the respondents.

2. The tribunal, on inquiry, by judgment dated 14.07.2014, upheld the case of death having occurred due to negligent driving of the offending vehicle. This finding has attained finality as it was never challenged further. The tribunal awarded compensation in the sum of ₹29,40,516/- which includes ₹1,35,000/- under various heads of non-pecuniary damages and ₹28,05,516/- towards loss of dependency and directed the insurer to pay the same with interest in favour of the claimants.

3. The insurer had also pleaded before the tribunal that the insurance policy for the period in question had been issued against a document which was found to be forged insurance policy for the preceding period. On this plea, the insurance company prayed for exoneration. This was rejected.

4. By appeal at hand, the insurance company questions the calculation of loss of dependency on the ground that it has been wrongly calculated with the multiplier of 18 on the basis of age of the deceased, ignoring the fact that the claim had been preferred by the parents in the case of death of a bachelor. It is pointed out that the age of the claimant father, per the photocopy of the election identity card (Ex.PW1/3) as on 01.01.2006 was 40 years while that of the mother per the election identity card (Ex.PW1/4) as on 01.01.2006 was 39 years. This would mean that the father and mother of the deceased would be 45 & 44 years respectively as on the date of accident. Thus, average age would be less than 45 years. Therefore, the multiplier of 14 would apply. The insurer also reiterates its plea for exoneration or the recovery rights.

5. Having regard to the facts and circumstances of the case, dependency loss has to be calculated after deducting 50% towards personal and living expenses assessed at income of ₹17318/- per month and on the multiplier of 14. It, however, cannot be ignored that the deceased was a young person who had a long future career lying ahead. Since she was in government employment, progressive rise in income was part of the terms of her engagement. Thus, the element of future prospects of increase to the extent of 50% deserves to be added. Therefore, the dependency loss comes to $(17318 \times 150 / 100 / 2 \times 12 \times 14)$ ₹21,82,068/-, rounded off to ₹21,83,000/-. Adding the other damages awarded by the tribunal, the total compensation payable in the case comes to $(21,83,000 + 1,35,000)$ ₹23,18,000/-.

6. It is noted that the tribunal had awarded interest at the rate of seven & half percent (7.5%) per annum. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*], the rate of interest is increased to 9% per annum from the date of filing of the petition till realization.

7. Coming to the plea for exoneration or recovery rights, all that needs to be said in this regard is that fabrication of a document purporting to be an insurance policy for earlier period cannot render the insurance cover issued for relevant period inoperative. Therefore, the plea is rejected.

8. By order dated 28.10.2014, the insurance company had been directed to deposit the entire awarded amount with accumulated interest with the Registrar General within the period specified whereupon 50% was allowed to be released in favour of the claimants, the balance kept in FDR in UCO

Bank, Delhi High Court branch, New Delhi. The Registrar General shall now calculate the amount payable to the claimants in terms of the award modified as above and release the same from out of the balance, refunding excess in deposit, if any, with statutory deposit, if made, to the insurer. Conversely, if any further amount requires to be paid, the insurance company shall be obliged to deposit the same with the tribunal within 30 days making it available to be released.

9. The appeal is disposed of in above terms.

MAY 09, 2016
ssc

R.K. GAUBA
(JUDGE)

