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

Date of Decision: 03rd May, 2016

\+ **MAC.APP. 1068/2013**

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD

..... Appellant

Through Mr. Rajat Brar, Adv.

versus

SHRI SURENDER KUMAR & ORS

..... Respondent

Through Ms. Monika Phartyal, Adv. for R-1 & 2

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Babu Lal, then aged 58 years, employed as a gang-man with Indian Railways with gross salary of ₹14,369/-, died in a motor vehicular accident that occurred on 19.12.2009 involving motor vehicle bearing registration No.DL 1LC 9360 (the offending vehicle), admittedly insured with the appellant insurance company (insurer) for the period in question. Babu Lal was a widower. His son, then aged 31 years, and daughter, then aged 34 years, first and second respondent herein, (collectively, the claimants) instituted an accident claim case (No.438/10) on 13.09.2010. The tribunal held inquiry and returned finding affirming the case that the death had occurred due to negligent driving of the offending vehicle. It assessed

compensation in the sum of ₹9,10,926/- with interest at 9% per annum in favour of the claimants and directed the insurer to pay.

2. The insurer is in appeal questioning the computation of loss of dependency on the ground the claimants (son and daughter) were major and therefore, not financially dependent on the father. The above contention must be rejected with reference to the law laid down in *National Insurance Company Limited v. Meghji Naran Sortiya & Ors.* 2009 ACC 289 (SC). A similar view was taken by a learned single Judge of this Court in *Devi Dutt & Ors. v. Manish Sharma & Ors.* (MAC.APP.No.753/2010 decided on 19.04.2012) against identical backdrop.

3. The insurer also contends that the income was wrongly taken as ₹14,369/- ignoring the fact that the salary slip (Ex.PW1/1) would show certain deductions. Having regard to the fact that the salary slip shows certain allowances over and above the basic pay and dearness allowance earned by the deceased (the Government servant), all available on regular basis, the contention must be rejected.

4. For the foregoing reasons, the appeal is unmerited and liable to be dismissed.

5. By order dated 22.11.2013, the insurance company had been directed to deposit 50% of the awarded amount which was allowed to be released to the claimants. The insurance company is directed to deposit the balance of its liability with the tribunal within 30 days making it available to be released to the claimants in terms of the impugned judgment.

6. The statutory deposit shall be refunded only upon the satisfaction of the award.

7. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 03, 2016
VLD