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

Date of Decision: 16th March, 2016

\+ **MAC.APP. 888/2010**

SUMAN ARORA & ORS ..... Appellants
Through: Mr. S N Parashar, Adv.

versus

SAJJAN SINGH & ORS ..... Respondents
Through: Mr. K P Singh Chauhan, Adv. for R-2
Ms. Suman Bagga and Mr. Pankaj Gupta, Advs. for insurance/R-3

\+ **MAC.APP. 653/2011 & CM Nos.13134/2011, 13137/2011**

ICICI LOMBARD GENERAL INSURANCE CO LTD ..... Appellant
Through: Ms. Suman Bagga and Mr. Pankaj Gupta, Advs.

versus

SUMAN ARORA & ORS ..... Respondents
Through: Mr. S N Parashar, Adv. for R-1
Mr. K P Singh Chauhan, Adv. for R-4

\+ **MAC.APP. 209/2013**

VINAY KUMAR ..... Appellant
Through: Mr. K P Singh Chauhan, Adv.

versus

SUMAN ARORA AND ORS ..... Respondents

Through: Mr. S N Parashar, Adv. for R-1
Ms. Suman Bagga and Mr. Pankaj Gupta, Advs. for insurance

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Mr. Rajesh Arora, then 37 years old, a practicing advocate, suffered injuries in a motor vehicular accident that occurred on 10.08.2009 when the car bearing registration No.DL 9CC 8876 (the car) in which he was traveling was involved in a collision against truck/trailer bearing registration No.HR 61 5896 (the offending vehicle) at about 1.30 PM in the area of Nilokheri bridge on G T Karnal Road, and died in the consequence. His widow and minor child (appellants in MAC.APP.No.888/2010), hereinafter referred to as the claimants, brought a claim petition under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) before the motor accident claims tribunal (tribunal) which registered it as suit No.344/2009. The claimants impleaded Sajjan Singh and Vinay Kumar (the driver and the owner respectively of the offending vehicle) as first and second respondents, in addition to ICICI Lombard General Insurance Company Ltd. (appellant in MAC.APP.653/2011). The mother of the deceased was impleaded as fourth respondent (performa party) on the plea that she was also a dependent on the deceased and thus entitled to compensation.

2. The tribunal's record shows that both the driver and owner of the offending vehicle, though duly served, chose not to appear and thus were set *ex parte*. The other two respondents in the claim proceedings, including the

insurer, appeared and filed written statements. During the course of the inquiry, the insurer took up the defence that there had been a breach of the terms and conditions of the insurance policy as the driver of the offending vehicle was not holding a valid or effective driving license.

3. The tribunal, on the basis of evidence led, found that the accident had occurred due to rash/negligent driving of the offending vehicle by its driver (Sajjan Singh) an on such basis awarded compensation in the sum of ₹11,62,600/- which includes ₹11,32,600/- towards loss of financial dependency, ₹10,000/- each towards loss of love & affection and loss of consortium and ₹5,000/- each towards funeral expenses and loss to estate. It awarded the said compensation with interest at 7.5% per annum from the date of filing of the petition (10.09.2009) till realization.

4. The plea of the insurance company that it was not liable to pay the compensation since the driver of the offending vehicle was not holding a valid or effective driving licence was upheld, on the basis of evidence of its witness R3W1 on the strength of his affidavit (Ex.R3W1/A), *inter alia*, proving that the insurance company had issued and served a notice under Order 12 Rule 8 of the Code of Civil Procedure, 1908 (CPC) on the owner and driver calling them upon to produce, *inter alia*, the original driving licence in spite of which there had been no response. The tribunal, thus, found that a case had been made out to grant recovery rights to the insurance company which otherwise was directed to specify the award, the owner and driver of the offending vehicle having been held jointly and severally liable to pay the compensation. Noticeably, in the operative part of the impugned

judgment passed by the tribunal on 18.09.2010, there was no clear direction with regard to the recovery rights.

5. The claimants filed appeal (MAC.APP.No.888/2010) contending that the compensation awarded is inadequate. Primarily, two issues have been raised; first, that the income as reflected in the income tax return (ITR) for the assessment year 2008-09 (Ex.PW1/B) was not considered and instead a lower income taken into account; and second, that the awards under the non-pecuniary heads of damages are paltry.

6. The insurance company by its appeal (MAC.APP.No.653/2011) raised a number of issues. But, at the hearing, it submitted through counsel that the only concern to be addressed is that a clear direction about recovery rights may be granted.

7. The owner of the offending vehicle (Vinay Kumar) had moved application under Order 9 Rule 13 CPC before the tribunal in the course of execution proceedings on 18.11.2011 contending that no notice had been served on him before he was set *ex parte*, also pleading that his son though having received the summons, had forgotten to communicate. The said application, however, was allowed to be withdrawn by the tribunal by order dated 23.01.2013 passed in miscellaneous case No.7/12 with liberty granted to file an independent appeal. In wake of the said proceedings, he filed an appeal (MAC.APP.No.209/2013), mainly to contend that the driver held a valid and effective driving license and, therefore there was no breach of terms and conditions of the insurance policy. *Per contra*, the learned counsel for the insurer submitted that the driving license, the photocopy of which has been submitted by the owner (Vinay Kumar), appears to be a

forged and fabricated document, not valid for the purposes of the offending vehicle. In response, the learned counsel for the appellant (MAC.APP.No.209/2013) (Vinay Kumar) submitted that he has verified the document and there is no doubt that it is genuine and, therefore, on its strength it is being submitted that the driver held a valid and effective driving license and there was no breach. On being asked, he stated that he is ready to face an inquiry and in case the document is found to be not correct, he is ready to face criminal prosecution.

8. The contention of the claimants about error in calculation of loss of dependency is correct. The ITR (Ex.PW1/B) clearly reflected that the income from profession was in the sum of ₹1,19,706/-. Therefore, the assumption of the tribunal that the income was ₹1,13,259/- per annum is not correct. The calculation, thus, has to be made afresh. After deducting 1/3rd towards personal & living expenses, the loss of annual dependency comes to (1,19,706 x 2 ÷ 3) ₹79,804/-. The tribunal adopted the multiplier of 15, and rightly so, given the fact that the deceased was aged 37 years. Thus, the total loss of dependency is calculated as (79,804 x 15) ₹11,97,060/-.

9. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, compensation in the sum the sum of ₹1 lakh each on account of love & affection and loss of consortium and ₹25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case is computed as (11,97,060 + 2,50,000) ₹14,47,060/- rounded off to ₹14,48,000/-.

10. It is noted that the tribunal had awarded the rate of interest at 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.

11. The tribunal had apportioned the award amongst the three dependents by specifying the amounts payable to each of them. In the facts and circumstances, it is directed that the entire enhanced portion, including the effect of the increase in the rate of interest, shall be payable to the first claimant (widow) Suman Arora only.

12. The learned counsel for the insurance company fairly concedes that an opportunity deserves to be granted to the owner (Vinay Kumar) to prove the existence of valid and effective driving license for the offending vehicle for the period in question. Therefore, this issue is remitted for further inquiry to the tribunal. It is made clear that it shall primarily be the burden of the owner Vinay Kumar to prove the fact that there was a valid and effective driving license held by the driver of the offending vehicle for the period in question. Needless to add, the insurance company will be entitled to cross-examine the witnesses proved in support of such claim and also be entitled to lead evidence in rebuttal. The evidence already led by the insurer during earlier inquiry before the tribunal shall also be considered by the tribunal. In the event of the tribunal reaching a finding that a valid and effective driving license was held by the driver, the observation in the impugned judgment that the insurer will have recovery rights shall stand vacated. Conversely, if

the owner (Vinay Kumar) fails to prove the facts argued by him, the insurer shall be granted recovery rights.

13. It may be added that in the event of it being found that the driving license relied upon by the owner (Vinay Kumar) is not genuine or is fabricated, the tribunal shall be duty bound to consider the expediency of initiating criminal action against him.

14. The insurer is directed to deposit the effect of the increase in the compensation and rate of interest with the tribunal within 30 days whereupon it shall be released to the claimant.

15. The parties are directed to appear before the tribunal on 18.04.2016.

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

17. The appeal stands disposed of with above terms.

R.K. GAUBA
(JUDGE)

MARCH 16, 2016
VLD