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

Date of Decision: October 27, 2016

+ **MAC.APP. 350/2015 & C.Ms.21232/15, 6881/15**

SHRIRAM GENERAL INSURANCE CO LTD Appellant

Through: Mr. Sameer Nandwani, Advocate

versus

JAMEELA KHATOON & ORS Respondents

Through: Mr. Rana Ranjit Singh, Advocate
for Mr. Basant Gupta, Advocate
for respondents No.1 to 3

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Impugned order of 4th February, 2015 grants compensation of ₹20,16,984/- with interest at the rate of 9% *per annum* to respondents-claimants on account of death of *Rashid*, the driver of the Canter, in a vehicular accident on 4th June, 2013 at 4 A.M..

The factual background, as noted in the impugned Award, is that on the above-mentioned date and time, the deceased alongwith his helper was going in the Canter Eicher and when he had reached near Punjabi Bagh, there was a vehicular accident of his Canter with Tata Truck in

which he sustained fatal injuries. Respondent-claimants are the legal heirs of the Canter's driver, who had filed a claim petition, which stands allowed vide impugned order. The two issues claimed before the learned Tribunal were regarding rashness and negligence on the part of the Tata Truck's driver in causing the accident in question and the entitlement of respondents-claimants to the amount of compensation claimed. Learned Tribunal while relying upon the Detailed Accident Report (*hereinafter referred to as 'DAR'*) and the fact that the charge-sheet has been filed for the offence under Sections 279/304-A of IPC against driver of the Tata Truck, who is respondent herein, had concluded that strict proof of accident is not required to be applied and the negligence was attributed to the driver of the Tata Truck and the issue of compensation was also decided by learned Tribunal court vide aforesaid impugned order/Award.

The challenge to the impugned Award by learned counsel for appellant-insurer is on the ground that there was contributory negligence on the part of the deceased, which has not been taken into consideration and according to learned counsel for appellant, the contributory negligence was to the extent of 50% and so, the awarded amount ought to be accordingly reduced from ₹20 lacs to ₹10 lacs.

Learned counsel for respondents-claimants, who are contesting respondents, refutes the stand taken by appellant's counsel and submits that in the facts and circumstances of this case, the negligence on the part of truck driver is quite evident as truck driver was unloading stones near the metro pillar while the truck was moving and so, it cannot be said that the truck was stationary and that there was no contributory negligence on

the part of the deceased.

It is also pointed out by learned counsel for respondents-claimants that the compensation granted under the non-pecuniary heads of ₹1,35,000/- was not taken into consideration and while assessing the contributory negligence, the total compensation under the pecuniary head is ₹18,81,984/-. This is not disputed by learned counsel for appellant, who submits that no relief is claimed in this appeal against respondents No.4 & 5. As such, service upon these respondents is dispensed with.

Upon hearing and on perusal of impugned Award, DAR as well as the evidence on record, this Court finds that it is quite evident from the DAR that the Tata Truck was slowly moving while it was unloading the stones and the negligence on the part of the deceased was at least 50% as Canter driven by deceased had struck at rear side of the truck in question and the impact of the collision was such that there was massive damage to the Canter whereas the damage to the truck in question appears to be minimal as it was in slow motion. The site plan of the spot on learned Tribunal's record also supports the DAR. It appears that the DAR has escaped the attention of learned Tribunal.

While taking into consideration the DAR, the site plan of the spot and the photographs of the Canter and the Truck in question, this Court has no hesitation to conclude that the contributory negligence on the part of the deceased was at least 50%. To the aforesaid extent, the impugned Award is modified and the pecuniary compensation granted to respondents-claimants stands reduced from ₹18,81,984/- to ₹9,40,992/-. While entertaining this appeal, the operation of the impugned Award was

stayed subject to deposit of the entire awarded amount with interest which was duly deposited. The said deposit by appellant was invested into an FDR.

In the light of the aforesaid, this appeal is partly allowed to the extent indicated above. It is directed that the compensation amount of ₹9,40,992/- plus ₹1,35,000/- i.e. ₹10,75,992/-with interest at the rate of 9% per annum be proportionately released to respondents-claimants in the ratio as indicated in the impugned Award, but in the light of this judgment and the rest of the deposited amount with interest be released to appellant. The statutory deposit, if made by appellant-insurer, be refunded.

This appeal and the applications are accordingly disposed of.

(SUNIL GAUR)
JUDGE

OCTOBER 27, 2016

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