

\$~13 & 14

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

Date of Decision: 19.05.2016

+ **MAC.APP. 1170/2013 & CM Nos.3049/2014 & 10957/2014**

SHRIRAM GENERAL INSURANCE CO LTD Appellant
Through Mr. Sameer Nandwani with Mr.
Priyadarsi Acharya, Advs.

versus

SHAFIQ AHMAD & ORS Respondent
Through Mr. A K Mishra, Adv. for R-1 & 2

+ **MAC.APP. 851/2014**

SHAFIQ AHMED AND ORS Appellant
Through Mr. A K Mishra, Adv.

versus

SHRIRAM GENERAL INSURANCE CO. LTD Respondent
Through Mr. Sameer Nandwani with Mr.
Priyadarsi Acharya, Advs.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Kushbakht, a bachelor, employed as area manager in Super Religare Laboratories died in a motor vehicular accident that occurred on 26.12.2011 involving negligent driving of a four wheeler tempo Tata 407 bearing

registration No.DL 1LK 6464 (offending vehicle), which was admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question. The first and second respondents (claimants), they being 87 year old widowed father and 37 year old blind unmarried sister, instituted an accident claim case (suit No.279/12), on 31.05.2012, seeking compensation under Sections 166 and 140 of Motor Vehicles Act, (MV Act). The insurer was impleaded as a party in addition to the driver and owner of the offending vehicle. The tribunal held inquiry and, by judgment dated 30.08.2013, upheld the case of death having occurred due to negligent driving of the offending vehicle. This finding, as it was not challenged any further, has since attained finality.

2. The tribunal awarded compensation in the sum of Rs.75,84,900/- with interest at 9% per annum from the date of filing of the petition in favour of the claimants and directed the insurer to pay. The amount of compensation awarded by the tribunal was calculated thus :

<i>S.No.</i>	<i>Description</i>	<i>Amount</i>
<i>1</i>	<i>Loss of Dependency</i>	<i>Rs. 75,24,900/-</i>
<i>2</i>	<i>Love & Affection</i>	<i>Rs. 25,000/-</i>
<i>3</i>	<i>Funeral expenses</i>	<i>Rs. 25,000/-</i>
<i>4</i>	<i>Loss of Estate</i>	<i>Rs. 10,000/-</i>
	<i>Total</i>	<i>Rs. 75,84,900/-</i>

3. The insurer is in appeal submitting that there are reasons to doubt that the second respondent claimant may not have been a sister of the deceased inasmuch as the copy of the voter identity card (Ex.PW1/4) describes Shafiq, the first respondent (claimant) to be her husband.

4. It is noted that the first respondent (claimant father) had appeared as PW1 during the inquiry and affirmed on oath that the second respondent is one of his eight children which included the deceased as the only son, all his other daughters having been settled in marriage. The testimony of PW1 with regard to the father and daughter relationship between him and the second respondent was not challenged during cross-examination for which opportunity was availed by the insurer. It needs to be added that the copy of the ration card (Ex.PW1/6), also part of the record, confirms that the second respondent is daughter of the first respondent rather than his wife, as is being suggested.

5. In the above circumstances, this Court finds the argument raised orally (it was not even pleaded before the tribunal nor included as a ground of appeal) to be in bad taste.

6. The insurer also questions the computation of loss of dependency on the ground that the tribunal fell into error by deducting 1/3rd towards personal & living expenses ignoring the fact that the deceased was a bachelor. It also questions the multiplier of 15 being adopted for calculation pointing out that the age of the first respondent, also a claimant, was 87 years old at the relevant point of time.

7. Both above contentions deserve to be accepted in view of the *dictum* in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121.

8. Since the deceased was a bachelor, one-half is to be deducted towards personal & living expenses from the income assessed at Rs.7,52,490/- per annum. The average age of the two claimants being 62 years, the

dependency loss has to be calculated on the multiplier of 7. Thus, the dependency loss is recomputed as $(7,52,490 \div 2 \times 7)$ Rs.26,33,715/- rounded off to Rs.26,35,000/-.

9. As pointed out by the counsel for the claimants, the tribunal had not granted adequate awards under the non-pecuniary heads of damages. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, compensation in the sum of Rs.1 lakh on account of loss of love & affection and Rs.25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case comes to $(26,35,000 + 1,50,000)$ Rs.27,85,000/-. The award is reduced accordingly. It shall carry interest as levied by the tribunal.

10. It is noted that the tribunal had apportioned the awarded compensation by specifying the amounts falling to the share of the two claimants. Some part of such shares was released for immediate use (in cash), a substantial portion, however, having been put in fixed deposit receipt for varied terms.

11. By order dated 18.12.2013, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General from which 60% was allowed to be released to the claimants, the balance be kept in fixed deposit receipt with UCO Bank, Delhi High Court branch for a period of six months to be renewed periodically.

12. Since the amount of compensation has been reduced, it is directed that the share for immediate use (in cash) released to the first respondent (father) shall be treated as his share in the compensation.

13. The Registrar General shall recalculate the amounts payable to the claimants in terms of the modified award. It is quite apparent that by virtue of the interim order, amounts in excess of their entitlement have been released. The Registrar General shall take necessary steps by recovery of the excess from the fixed deposit receipts that would have been made out for carrying out directions in the interim order dated 18.12.2013 and refund the same to the insurance company with balance lying in deposit.

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

15. The appeals are disposed of in above terms.

MAY 19, 2016
VLD

(R.K. GAUBA)
JUDGE

