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

Date of Decision: 11th March, 2016

+ **MAC.APP. 1266/2012**

BINDA HAZARIKA & ANR.

..... Appellants

Through: Mr. Anshuman Bal, Adv.

versus

RAJ BAHADUR & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Abon Amrit Hazarika, aged 35 years, a bachelor, died as a result of injuries suffered in a motor vehicular accident that took place at about 3.15 a.m. on 09.11.2010, involving a car bearing registration No. DL 4C AG 1044 (the offending vehicle) which was admittedly insured with the third respondent herein against third party risk for the period in question. The appellants (claimants) sought compensation by petition under Sections 166 and 140 of the Motor Vehicles Act (MV Act) instituted on 20.12.2010 before the motor accident claims tribunal (the tribunal) which registered it as Suit No. 338/2010. In the claim petition, besides the third respondent (insurer), the driver and the owner of the offending vehicle were impleaded

as party respondents, they being first and second respondents respectively herein. The said two parties suffered the proceedings *ex-parte*.

2. The police had also filed a detailed accident report (DAR) on 09.12.2010. The tribunal having held inquiry, granted compensation in the sum of ₹ 4,25,516/- with interest in favour of the claimants. The insurance company had raised the plea that the driver (the first respondent herein) was not holding a valid or effective driving license which, in the submission of the insurance company, constituted breach of terms and conditions of the insurance policy. This plea was upheld on the finding that the driver was not holding a valid and effective driving license and insurance company was absolved of its liability. The driver and owner were held jointly and severally liable to pay compensation.

3. By the appeal at hand, the appellants raise two issues. It has been contended that the loss of dependency was wrongly worked out as the multiplier of 9 was applied on the basis of average age of the parents, calculated as 56 years. It is argued that the age of the mother should have been the proper basis for multiplier to be adopted. The claimants also contend that given the fact that a third party insurance policy existed, the insurance company should have been asked to pay the compensation though it could have been granted recovery rights.

4. In spite of notice, the respondents have not appeared to contest. It is noted that though the insurance company was represented on some of the previous dates, no one has appeared today to resist the appeal.

5. This Court does not accept the contention that the multiplier should have been adopted on the basis of age of the mother only. Since both the parents have claimed to be the dependants, their respective age has to be factored in. Thus, the view taken by the tribunal cannot be faulted.

6. On the other issue, however, the claimant's plea is correct. Following the view taken in *United India Insurance Company Ltd. V. Lehu & Ors.* (2003) 3 SCC 338 and *National Insurance Company V. Swaran Singh* (2004) 3 SCC 297, it is directed that the insurance company (third respondent) shall be liable to pay the compensation awarded in the case at hand. It is directed to deposit the same with upto date interest with the tribunal within 30 days whereupon it shall be released to the claimants in terms of the impugned judgment.

7. The insurance company, however, shall have the right to recover the amount thus paid from the insured (second respondent) by initiating appropriate proceedings before the tribunal.

8. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 11, 2016

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