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

**Date of Decision: 8<sup>th</sup> March, 2016**

+ **MAC.APP. 1280/2012**

**IFFCO TOKIO GEN INS CO LTD**

**..... Appellant**

Through: Ms. Shantha Devi Raman and Mr.  
Arbaaz Hussai, Advs.

versus

**SAVITA AND ORS**

**..... Respondents**

Through: Ms. Neetu Singh and Mr. Lalit  
Kataria, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT**

**R.K.GAUBA, J (ORAL):**

1. The insurance company is aggrieved with the view taken by the Motor Accident Claims Tribunal (the tribunal) in judgment dated 27.08.2012 passed on petition under sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) presented by the first and fifth respondents herein registered as MACT case No.150/12/10 whereby compensation in the sum of ₹60,40,658/- was awarded with interest at 9% per annum from the date of filing of the petition (08.07.2010) till deposit on account of death of Ram Kumar in a motor vehicular accident that occurred on 03.05.2010 involving scooter bearing registration No.DL 9S AB 4315, admittedly insured against third party risk with the appellant (insurer) for the period in question. The amount of compensation awarded included ₹59,10,658/- towards loss of dependency.

It is the calculation of this component which is the bone of contention raised in the appeal at hand.

2. Before the tribunal, the first claimant (widow) by her own affidavit (Ex.PW1/A) had proved that the deceased, aged 47 years, was working with Air India as Lead Assistant drawing salary of ₹35,454/- per month. The witness proved the salary certificate for the assessment year 2009-2010 (Ex.PW1/6) and the income tax return (ITR) for the said year (Ex.PW1/7). She also proved copy of the salary certificate for the assessment year 2010-2011 (Ex.PW1/5). The tribunal adopted the income declared for the assessment year 2009-2010 as the benchmark to calculate the loss of dependency. It is pointed out by the appellant that the income for the assessment year 2010-2011 which was for the immediate year preceding death was lower than that for the previous year (assessment year 2009-2010). The argument raised is that the income for the last year should have been the correct benchmark.

3. It is noted that the insurer during the inquiry made no endeavour to seek explanation of the witness as to why there had been a reduction in the income for the assessment year 2010-2011 as compared to what had been earned during the assessment year 2009-2010. It is shown by evidence that the deceased was in regular employ of Air India. The dip in income for assessment year 2010-2011 could have been for any reason other than what is now being conjectured as the possible reasons to raise the argument that the income of the deceased should be calculated on that basis. This Court does not find any substance in the grievance raised.

4. The claimants included the widow, two children, aged father and mother. The name of the father is described as Captain Bhim Singh. On the basis of this, the insurance company submits that the father and mother could not have been brought in as dependents. Mere use of the description “Captain” cannot lead to the inference that the father would be financially self-reliant. No inquiry was made by the insurance company to ascertain the financial status of the father or mother. In absence of such inquiry, the argument raised cannot be accepted.

5. Thus, the appeal is devoid of substance and is liable to be dismissed.

6. By order dated 17.12.2012, the insurance company had been directed to deposit 60% of the awarded amount with proportionate interest with the Tribunal within six weeks. The said amount was allowed to be released to the claimants. The insurance company is now directed to deposit the balance within 30 days whereupon the same shall be released.

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

8. The appeal is disposed of in above terms.

**R.K. GAUBA**  
**(JUDGE)**

**MARCH 08, 2016**  
**VLD**