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

Date of Decision: 02nd May, 2016

\+ **MAC.APP. 141/2014**

THE NEW INDIA ASSURANCE CO LTD ..... Appellant
Through: Mr. J P N Shahi, Adv.

versus

SMT SUMAN SHARMA & ANR ..... Respondents
Through: Mr. Anshuman Bal, Adv. for R-1 to 5

\+ **MAC.APP. 1011/2014**

SUMAN SHARMA & ORS ..... Appellants
Through: Mr. Anshuman Bal, Adv.

versus

NEW INDIA ASS CO LTD ..... Respondents
Through: Mr. J P N Shahi, Adv. for R-1

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Subhash Chand, aged 39 years, diploma holder from ITI, qualified in the trade of "tool and dye" from a government institute, previously employed with Daewoo Motor India Ltd. at a salary of ₹15,000/- per month, died on account of injuries suffered in a motor vehicular accident that occurred on 17.06.2012 due to negligent driving of truck bearing No.HR

63A 8111 (the offending vehicle) which was admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question. His wife, children and parents, first to fifth respondents (claimants), filed an accident claim case (MAC petition No.109/12) on 27.07.2012 under Sections 166 & 140 of Motor Vehicles Act, 1988 (MV Act), impleading the insurer as respondent in addition to the driver and owner of the offending vehicle. After inquiry, the tribunal, by judgment dated 03.01.2014, awarded compensation in the total sum of ₹19,61,920/- with interest at 9% per annum in favour of the claimants, the said amount inclusive of ₹17,26,920/- calculated as loss of dependency on the assumed income of ₹12,792/- per month, after addition of future prospects over and above the minimum wages of a skilled worker.

2. The insurer which has been called upon to indemnify and pay has come up with appeal (MAC.APP.No.141/2014) to challenge the award on the ground the addition of future prospects was incorrect. The claimants filed cross-objections which were treated as appeal (MAC.APP.No.1011/2014) seeking enhancement. At the hearing, however, the learned counsel for the claimants submitted that the cross-objections are not pressed and only the appeal of the insurance company is contested.

3. Having heard both sides and having gone though the tribunal's record, this Court finds the contentions raised by the insurer to be devoid of substance. Daewoo Motors India Ltd. with which the deceased was previously employed, such employment having been proved by sufficient evidence (Ex.PW1/12) in the form of salary slips up to March, 2003 had gone into liquidation. It came out during the inquiry that the official

liquidator would not produce the relevant records as to terms of engagement. It is the contention of the claimants that the deceased had continued to be engaged by the said entity, even during liquidation but the requisite proof was not forthcoming. In the facts and circumstances, the tribunal assessed the income notionally on the basis of minimum wages of a skilled worker, and rightly so. The objection to the addition of future prospects of increase against above backdrop is found to be unfair in the face of clear evidence that the deceased was not only well-qualified and skilled with sufficient experience in the trade in which he had been engaged by Daewoo Motor India Ltd. but also the fact that he is proved to have continued to incur similar expenditure as before on his dependent family members, including on account of education of his children. Having regard to the level of the said expenditure, it cannot be believed that he would have been surviving at minimum wages only.

4. Given the past services with Daewoo Motors India Ltd. and the progressive rise that he is shown to have gained in such employment, even if it were to be assumed that after the said company had gone into liquidation, the deceased was constrained to switch jobs, the element of progressive rise in income in other employment is inherent in his qualifications and past experience.

5. For the above reasons, the appeal is unmerited and liable to be dismissed.

6. By order dated 11.02.2014 in MAC.APP.No.141/2014, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General within the period specified and out

of the same 80% was allowed to be released, the balance kept in fixed deposit receipt with UCO Bank, Delhi High Court branch.

7. The Registrar General shall now release the balance in favour of the claimants and refund the statutory amount, if deposited, to the insurance company.

8. Both the appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 02, 2016
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