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

Date of Decision: 11.05.2016

\+ MAC.APP. 966/2014 and CM No.17379/2016 and 17692/2014

RELIANCE GENERAL INSURANCE CO LTD ..... Appellant

Through: Mr. A.K. Soni, Advocate

versus

NIRMALA DEVI & ORS ..... Respondents

Through: Mr. Manmohan Yadav, Adv. for R-1 to 3

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Surender Kumar, employed as a driver with Delhi Transport Corporation (DTC) suffered injuries in a motor vehicular accident that occurred on 12.12.2012 involving Chevrolet Beat Car bearing registration no.DL-10CB-3547 (car) and died in the consequence. The first to third respondents (claimants) instituted an accident claim case (MACT case no.142/2013) on 15.05.2013 seeking compensation under Sections 140 and 166 of the Motor Vehicles Act, 1988 (M.V. Act) impleading the appellant insurance company (insurer) and the fourth respondent (the driver-cum-owner of the offending vehicle) as respondents.

2. The Motor Accident Claims Tribunal (tribunal), by judgment dated 06.08.2014, upheld the case that the accident had occurred due to negligent driving of the offending vehicle, this finding having been returned on the basis of testimony of Mr. Jitender Yadav (PW-3). The tribunal assessed the compensation in the sum of Rs.37,41,580/- and awarded it with interest at the rate of 7.5% p.a. in favour of the claimants, the said amount being inclusive of Rs.35,06,580/- calculated as loss of dependency.

3. The insurer, which has been burdened with the liability to pay, is in appeal questioning the finding on the issue of negligence and also the calculation of loss of dependency. Its prime contentions are that the element of future prospects of increase to the extent of 15% added over and above the salary accruing from service with DTC was improper in view of the age (more than 55 years) of the deceased. It is further the contention that having regard to the age, the multiplier of 9 would have applied. The insurer also submits that the deduction on account of personal and living expenses to the extent of 1/3 only was improper as the son and daughter (second and third respondent) are major and the daughter is married. It is, however, noted that the tribunals had apportioned the compensation in favour of the said son and daughter as well.

4. The contention against the finding on negligence is frivolous for the simple reason the evidence of PW-3 was not contested by any evidence in rebuttal. The deposition of PW-3 cannot be disbelieved only because he did not lodge a report with the police about the accident on the said very date.

5. The learned counsel for the claimant fairly conceded that the future prospects could not have been added and the multiplier of 9 should have

been applied in view of the age of the deceased [per dictum in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.,* (2009) 6 SCC 121)].

6. The counsel for the insurance company further points out that in calculation of loss of dependency, the liability towards income tax also has to be kept out. This submission is also conceded by the claimants. It is noted that the tribunal found that the annual salary of the deceased was ₹4,15,794/-. Since the accident had occurred on 12.12.2012, this would pertain to the financial year 2012-2013. Having regard to the rates of income tax in force for the said financial year, ₹30,000/- is deducted on account of the Income Tax liability. By this reckoning, the annual income on which dependency loss is to be calculated comes to (₹4,15,794/- - ₹30,000/-) = ₹3,85,794/-.

7. This court does not accept the contention of the appellant about the deduction on account of personal and living expenses. The financial dependency is not the only dependency. Thus the loss of dependency is calculated as ₹(3,85,794/- x 2 / 3 x 9) ₹23,14,764/-, rounded off to ₹23,15,000/-. Adding ₹2,35,000/- towards non pecuniary heads of damages, the total compensation in the case is computed as (₹23,15,000 + ₹2,35,000/-) ₹25,50,000/-.

8. Following the consistent view taken by this court, the rate of interest is increased to 9% p.a. from the date of filing of the petition till realization. The award is modified accordingly.

9. It is noted that the tribunal had apportioned the compensation awarded by it by specifying the amounts falling to the share of the three claimants.

By order dated 31.10.2014, the insurance company had been directed to deposit the entire awarded amount with accumulated interest with the Registrar General within the period specified from which 50% was allowed to be recovered, the balance kept in fixed deposit with the UCO Bank, Delhi High Court branch, New Delhi, initially for a period of one year to be renewed from time to time. Since the award has been reduced, it is directed that the amounts already released in favour of the second and third respondents (i.e. son and daughter) shall be treated as their respective shares, the entire balance now payable to be released in favour of the first respondent (wife) alone.

10. The Registrar General shall calculate the amount payable to the first respondent in terms of these directions and release the same from out of the deposit held refunding the excess with statutory deposit to the insurance company.

11. The appeal and the pending applications are disposed of.

R.K. GAUBA
(JUDGE)

MAY 11, 2016
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