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

Date of Decision: 19.05.2016

+ MAC.APP. 537/2014

SHRIRAM GENERAL INSURANCE CO LTD Appellant
Through: Mr. P. Acharya, Advocate

versus

SANGEETA & ORS Respondents
Through: Mr. Anshuman Bal, Adv. for R-1 to R-5

+ MAC.APP. 1024/2014

SANGEETA & ORS Appellants
Through: Mr. Anshuman Bal, Advocate

versus

SHRI RAM GENERAL INSURANCE CO
LTD & ORS Respondents
Through: Mr. P. Acharya, Adv. for R-1

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Virender Singh @ Pintu, aged 31 years, engaged in his own business, died as a result of the motor vehicular accident that occurred on 29.06.2011 at Aligarh Tappal Marg Jikarpur Mor near Khurja, Aligarh, U.P., involving a motor vehicle described as a Dumper bearing registration no. RJ-11GA-

0149 (offending vehicle). His dependent family members, first to fifth respondents (claimants) instituted an accident claim case (MACT 283/11) on 18.07.2011 seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988 (M.V. Act). In the said proceedings, Shriram General Insurance co. Ltd. (appellant in MACA 537/2014) was impleaded as a party in addition to Shreepal and Vijay Aggarwal (sixth and seventh respondent herein) described as driver and owner of the vehicle respectively. It appears that the driver and owner, upon being served with notices, filed a written statement denying the liability. The insurance company, by its written statement, admitted the insurance cover but pleaded the statutory defences.

2. Upon inquiry, the tribunal, by judgment dated 28.03.2014, upheld the case of the claimants that death had occurred due to the negligent driving of the offending vehicle. This finding has attained finality as it was not further challenged.

3. The tribunal awarded compensation in the sum of Rs.30,05,920/- with interest at the rate of 7.5% p.a., the amount being inclusive of Rs.27,70,920/- calculated as dependency loss.

4. By its appeal (MACA 537/2014), the insurer, which has been fastened with the liability to pay, questions the calculation of loss of dependency on the ground that the tribunal wrongly added the element of future prospects of increase to the extent of 50%. It is further the submission of the insurer that the investigation made has since revealed that the offending vehicle was not covered by a valid permit in as much as the permit taken earlier in respect of the said vehicle had expired on 16.09.2011. By application (CM 10304/2014) the insurer seeks an

opportunity to lead additional evidence under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC).

5. *Per contra*, the claimants, by their appeal (MACA 1024/2014), have submitted that the tribunal fell into error by assuming the income of the deceased for the assessment year 2011-2012 to be ₹1,53,940/-. It is pointed out that the income tax return (ITR) for the said assessment year (vide Ex. PW2/4) instead shows gross total income to be ₹2,02,440/-. It is submitted that the dependency loss deserves to be calculated accordingly. The claimants further seek increase in the rate of interest to 9% p.a.

6. Having heard both sides and having gone through the record, it is found that the submission of the claimants is correct. The tribunal has obviously misread the ITR for the assessment year 2011-2012 (Ex. PW2/4). It showed the total income in the sum of ₹2,02,440/-. It may also be noted here that the claimants had further proved ITR for the assessment year 2010-2011 (vide Ex. PW2/5) which indicated the total income earned to be ₹1,90,460/-. Thus, there is a cogent and irrefutable evidence showing progressive rise in the income accruing to the deceased, justifying the element of future prospects to be added. [see judgment dated 28.03.2016 in MAC.APP. 548/2013 *United India Insurance Co. Ltd. v. Kamla & Ors.*].

7. In these circumstances, the calculation of loss of dependency have to be carried out afresh, on the multiplier of 16, so correctly chosen by the tribunal and after deduction of 1/4th towards personal and living expenses (there being 5 dependents), loss of dependency is, thus, calculated as (₹2,02,440/- x 150/100 x 3 / 4 x 16) ₹36,43,920/- rounded off to

₹36,44,000/-. Adding the non-pecuniary damages awarded by the tribunal, the total compensation comes to (₹36,44,000/- + ₹2,35,000/-) ₹38,79,000/-.

8. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*].

9. Coming to the plea of breach of the terms and conditions of the insurance policy, having regard to the facts pleaded in the application (CM 10304/2014), there is no case made out by the insurer since the permit is said to have expired on 16.09.2011, and the accident having occurred in June 2011. The said plea and the application must be rejected. Ordered accordingly.

10. By order dated 03.07.2014 in MACA 537/2014, the insurance company had been directed to deposit the entire awarded amount with upto date interest with the Registrar General of this court, from which 80% was released in favour of the claimants, the balance kept in fixed deposit receipts with the UCO Bank, Delhi High Court Branch, New Delhi. The Registrar General shall now release the same in terms of the impugned award. The insurance company shall deposit the remainder of its liability with the tribunal within 30 days of this judgment, making it available to be released to the claimants.

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

12. Both appeals and the pending application are disposed of in above terms.

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

MAY 19, 2016
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