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

Date of Decision: 25.05.2016

+ **MAC.APP. 1081/2014**

SHRIRAM GENERAL INSURANCE CO.LTD Appellant
Through Mr. Sameer Nandwani, Adv.

versus

BHUPENDER @BHUPENDER KUMAR & ORS Respondent
Through Mr. Ghanshyam Thakur, Adv. for R-1
& 2

+ **MAC.APP. 1083/2014**

SHRIRAM GENERAL INSURANCE CO.LTD Appellant
Through Mr. Sameer Nandwani, Adv.

versus

RAJESH KUMAR & ORS Respondent
Through Mr. Ghanshyam Thakur, Adv. for R-1
& 2

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Satyam @ Satyam Kumar (born on 26.10.1997) and Preet Kumar @ Kalu (born on 11.07.1997) were riding motorcycle bearing registration No.DL 4S AD 3273 (the motorcycle), the former driving and the latter on the pillion, on 19.11.2012 at about 12 noon time when their vehicle was

involved in a collision against Tata 407 truck bearing registration No.HR 38 J 7986 (the truck), admittedly insured against third party risk with the appellant insurance company for the period in question. Both boys, aged about 15 years at that point of time died consequent upon the injuries suffered in the process. Their respective parents, first and second respondents (claimants) in both these appeals, instituted accident claim cases (case Nos.173/12 and 282/13) seeking compensation under Sections 166 & 140 of Motor Vehicles Act, 1988 (MV Act), on 02.03.2013. In the said proceedings the appellant insurance company was impleaded as one of the respondents, in addition to driver and owner of the truck on the averments that the accident had been caused due to negligent driving by Ram Gyan Mehto (third respondent in these appeals).

2. The tribunal clubbed the two cases and held an inquiry and, on that basis, by judgment dated 24.09.2014, upheld the case of deaths having occurred due to negligent driving of the truck. This finding has since attained finality as it was not challenged further. The tribunal awarded compensation in the sum of ₹12,26,400/- in each case directing the insurance company to pay with interest at 9% per annum. For calculating the compensation, the tribunal assumed the potential income of the deceased boys at ₹10,800/- per month, deducted 50% towards personal & living expenses and applied the multiplier of 18. It further added ₹25,000/- each towards loss of love & affection and funeral charges besides ₹10,000/- towards loss of estate.

3. While contesting the two cases, the insurance company had argued that both the deceased persons were minor (15 years in age) and were

themselves guilty of contributory negligence inasmuch as they could not have been conceivably holding driving license which fact, even otherwise, was admitted during the inquiry by the respective claimants. This plea was rejected by the tribunal referring to the view taken by the Supreme Court in *National Insurance Company V. Swaran Singh* 2004 ACJ 1 and observing that the victims were third parties and, therefore, such defence could not be taken.

4. The insurer is in appeal in both the cases questioning the computation of compensation and also reiterating its plea about contributory negligence.

5. These cases involved claims for compensation on account of death of children. By judgment pronounced on 13.05.2016 in a batch of similarly placed other appeals led by MAC.APP.554/2010, *Chetan Malhotra v. Lala Ram*, this Court held as under :

“Subject to all other requisite conditions being fulfilled, for the foregoing reasons, in order to bring about consistency and uniformity in approach to the issue, it is held that claims for compensation on account of death of children shall be determined as follows :

(i). Till such time as the law is amended by the legislature, or the Central Government notifies the amendment to the Second Schedule in exercise of the enabling power vested in it by Section 163-A (3) of the Motor Vehicles Act, 1988, and except in cases wherein the prospects of employability and earnings (in future or present) of the deceased child are proved by cogent and irrefutable evidence, this having regard, inter alia, to the academic record or training in special talents or skills, for computing the pecuniary damages on account of the loss to estate, the notional income of non-earning persons (₹15000/- p.a.) as specified in the Second Schedule (brought in force from 14.11.1994), shall be assumed to

be the income of the deceased child, and taken into account after it is inflation-corrected with the help of Cost Inflation Index (CII) as notified by the Government of India from year to year under Section 48 of the Income Tax Act, 1961, by applying the formula indicated hereinafter.

(ii) For inflation-correction, the financial year of 1997-1998 shall be treated as the “base year” and the value of the notional income relevant to the date of cause of action shall be computed in the following manner :-

$$\text{₹15,000/-} \times A \div 331$$

[wherein the figure of ‘₹15,000/-’ represents the notional income specified in the second schedule requiring inflation-correction; ‘A’ represents the CII for the financial year in which the cause of action arose (i.e. the accident / death occurred); and the figure of ‘331’ represents the CII for the ‘base year’]

(iii). After arriving at an appropriate figure of the present equivalent value of the notional income (i.e. inflation-corrected amount), it shall be rounded off to a figure in next thousands of rupees.

(iv). The amount of notional income thus calculated shall be reduced to two-third, the deduction to the extent of one-third being towards personal & living expenses of the deceased, the balance taken as the annual loss to estate (hereinafter also referred to as “the multiplicand”).

(v). For assessment of the pecuniary damages on account of the death of children upto the age of 10 years, the loss to estate shall be calculated, capitalizing the multiplicand, by applying the multiplier of ten (10).

(vi). For children of the age-group of more than 10 years upto 15 years, the loss to estate shall be calculated by applying the multiplier of fifteen (15).

(vii). For children of the age-group of more than 15 years but less than 18 years, the loss to estate shall be calculated by applying the multiplier of eighteen (18).

(viii). After the pecuniary loss to estate has been worked out in the manner indicated above, an amount equivalent to the amount thus computed shall be added to it as the composite non-pecuniary damages taking care of not only the conventional heads but also towards future prospects as awarded in R.K. Malik v. Kiran Pal (2009) 14 SCC 1.

(ix). The final sum thus arrived at, appropriately rounded off, if so required to the nearest (if not next) thousands of rupees, shall be awarded as compensation for the death of the child.”

6. Since the deaths had occurred on 19.11.2012, the CII for financial year 2012-13 (i.e. 852) would apply. Since the date of birth of the two boys was proved to be 26.10.1997 and 11.07.1997, both had crossed the age of 15 years, and thus, the multiplier of 18 would apply.

7. The inflation corrected notional income, thus, comes to $(15,000 \times 852 \div 331)$ ₹38,610/- rounded off to ₹39,000/- per annum. After deducting $1/3^{\text{rd}}$ towards personal & living expenses, and applying the multiplier of 18, the pecuniary loss to estate is calculated as $(39,000 \times 2 \div 3 \times 18)$ ₹4,68,000/-. Adding the same amount of money towards composite non-pecuniary damages, total compensation in each of these cases is calculated as $(4,68,000 \times 2)$ ₹9,36,000/-.

8. The awards in the two cases are reduced accordingly. They shall, however, carry interest at the rate of 9% per annum as levied by the tribunal.

9. Bhupender @ Bhupender Kumar (PW2) father/claimant of deceased Satyam admitted during cross-examination that the deceased was not holding a valid driving license at the time of accident. He also conceded that he was aware that the age for issuance of a driving license to drive a motorcycle is 18 years. Rajesh Kumar (claimant), father of the other child Preet Kumar appearing as (PW1) made similar admission. He conceded that his deceased son was driving the motorcycle without holding a valid driving license and further that he was aware that the age of issuance of license for plying vehicle is 18 years. The evidence of PW2 shows that Satyam was riding the pillion. The motorcycle belonged to Bhupender (brother of PW1). The claimants examined Deepak Kathuria (PW3), an eyewitness to the appellants, who in the course of his cross-examination further admitted that both the boys on the motorcycle were not bearing any helmets.

10. The above facts clearly bring out negligence on the part of the two deceased persons and their receptive parents. It is not a case where a minor child has strayed on to the road where he was crushed to death by a motor vehicle driven rashly or negligently. It is a case where teenaged boys were allowed by their respective parents to be on their own, one driving a motorcycle and the other riding on the pillion, with full knowledge that they were not authorized to drive the vehicle or be on the pillion without even the protection of head gear (helmets) in this manner on the public road. This court agrees with the submission of the insurance company that the element of contributory negligence on the part of the deceased persons and their respective parents has to be factored in. The parents of the two deceased children being the beneficiaries cannot escape from the effect of

contributory negligence which, in the present case, is assessed to the extent of 10%. Thus, the insurance company is held liable to pay the above compensation to the extent of 90% in each case.

11. The awards are modified accordingly.

12. By similar orders passed on 28.11.2014, in both these appeals, the insurance company had been directed to deposit the awarded amount with accumulated interest with Registrar General of this Court within the period specified and, upon such deposit being made, 60% was allowed to be released, the balance kept in fixed deposit receipts with UCO Bank, Delhi High Court branch. The Registrar General shall now calculate the amounts payable in terms of the modified award and release the balance to the claimants refunding the excess, if any, to the insurance company with statutory deposit, if made.

13. Both appeals are disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 25, 2016
VLD