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

Date of Decision: 25th February, 2016

\+ **MAC.APP. 1177/2014 & CM APPL. 21175/2014**

RELIANCE GENERAL INSURANCE CO LTD ..... Appellant

Through: Mr. Rajeev M. Roy, Adv.

versus

MURGAN & ORS ..... Respondents

Through: Mr. Sanjeev Kr. Baliyan, Adv. for R-1 & 2

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Virthambal aged 22 years died as a result of injuries suffered in a motor vehicular accident that had occurred at about 06:30 AM on 15.03.2014 involving car (i-20) bearing registration no.HR-06P-7575 (the offending vehicle) concededly insured with the appellant herein against third party risk for the period in question, it having hit a motorcycle bearing registration no.DL-3SAE-3592 (motorcycle) driven by her husband Murgan she travelling as pillion rider. Murgan and Master Madhwan, husband and son of the deceased became the claimants in the proceedings registered as suit no.133/2014 on the basis of detailed accident report (DAR) submitted

by the police in the context of first information report (FIR) no.112/2014 that was registered with police station Hazarat Nizamuddin respecting the fatal accident. The appellant/insurance company was impleaded as second respondent in addition to Sanjay Arora (driver-cum-owner).

2. The tribunal held inquiry and on its basis awarded compensation in the sum of ₹26,32,860/- with interest at the rate of nine percent (9%) per annum from the date of filing of petition till realization. In reaching the said amount of compensation, the tribunal followed the dictum in *Royal Sundaram Alliance Insurance Co. Ltd. vs. Master Manmeet Singh & Ors.*, ILR (2012) IV Delhi 547, wherein the method of calculation of loss of dependency on account of gratuitous services rendered by a housewife have been spelt out. It may be mentioned here that though the claimants pleaded that the deceased was working as maid earning ₹10,000/-, in absence of any proof respecting the said avocation or income, the pleadings to that effect were not accepted by the tribunal. Thus, the deceased was treated as housewife and loss of dependency calculated on the basis of the formula given in *Royal Sundaram Alliance Insurance Co. Ltd.* (supra).

3. It is the contention of the appellant that since the husband and son had pleaded that the deceased was working as maid, the judgment in *Royal Sundaram Alliance Insurance Co. Ltd.* (supra) could not have been invoked. It is noted that the insurance company had contested the claimant on facts and its objection was upheld and in the consequence the deceased was treated as a housewife and judgment *Royal Sundaram Alliance Insurance Co. Ltd.* (supra) applied. Having raised the said objection in the first place,

it does not lie in the mouth of the insurance company now make an about turn and claim otherwise.

4. There is, however, the substance in the submission that the deduction on account of loss of love & affection should have been made following the dictum in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.,* (2009) 6 SCC 121. Indeed, in para no.34 (vii) in the judgment in *Royal Sundaram Alliance Insurance Co. Ltd.* (supra), the learned single judge of this court had directed that while calculating loss of dependency in the cases of death of housewife, "there shall not be any deduction towards the personal and living expenses." This was based on view taken by judgments referred and conclusions reached in (para 33 of) the report which reads as under:-

> "*Thus, if a deceased housewife who lost her life in a motor accident would have died a natural death, the pecuniary advantage on account of savings made of the expenditure required for her maintenance would have otherwise also accrued to the benefit of the Claimants. Since this pecuniary advantage does not become receivable only on account of accidental death, in my view, the portion of the husband's income (spent on the deceased's maintenance) cannot be deducted."*

5. It is noted that in taking above view in *Royal Sundaram Alliance Insurance Co. Ltd.* (supra), the learned single judge did not consider the dictum in *Sarla Verma* (supra). Therefore, there is no reason why in calculation of loss of dependency in a case arising out of death of housewife there should be no deduction towards personal and living expenses. The general rule will have to apply to such cases as well.

6. In these circumstances, against the monthly income assumed at ₹11147.5, rounded off to ₹11148/-, deduction to the extent of one third is made and monthly dependency is calculated as (11148x2/3) ₹7432/-. On the multiplier of 18, which was rightly adopted, the total loss of dependency comes to (7432x12x18) ₹16,05,312/-.

7. The learned counsel for the appellant then argued that the award of non-pecuniary damages in the sum of ₹1,00,000/- on account of loss of love & affection and loss of consortium and ₹25,000/- towards funeral expenses was unjust and improper. This contention must be rejected and reference need to be made only to *Rajesh & Ors. vs. Rajbir & Ors.*, (2013) 9 SCC 54, wherein a similar approach was made by the Hon'ble Supreme Court.

8. Thus, the total compensation payable in the case is calculated as (1605312+225000) ₹18,30,312, rounded off to ₹18,31,000/-. It shall carry interest at the rate levied by the tribunal.

9. By order dated 23.12.2014, the appellant/insurance company was directed to deposit the entire awarded amount with accumulated interest with the Registrar General within the period specified and upon such deposit being made, sixty percent (60%) was allowed to be released, the balance having been kept in FDR for a period of one year. The Registrar General shall now re-calculate the amount payable to the claimants in terms of the award modified as above and release the balance to the claimants as per respective rights in terms of directions in the impugned judgment, refunding the balance which statutory deposit, if made, to the insurance company.

10. In case any excess amount has already been released to the claimant, the same shall be liable to be refunded to the insurance company within the same period.

11. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

FEBRUARY 25, 2016
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