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

Date of Decision: 02nd February, 2016

\+ **MAC.APP.No. 893/2015 and CM No.3674/2016 (Under Order 23 Rule-3 CPC)**

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD
..... Appellant

Through: Mr. Rajat Brar, Adv.

versus

BANASHREE CHAKRABORTY & ORS (NATIONAL INSURACE CO. LTD)
..... Respondents

Through: Mr. Sanjiv Gupta, Adv. for R-1 to 4.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The claim case under Section 166 and 140 of Motor Vehicles Act, 1988 ("the MV Act") presented by the first to fourth respondents herein was registered by the motor accident claims tribunal ("the tribunal") as suit no.48/2012 which was inquired into alongside certain other claim cases, all of which resulted in common judgment dated 28.08.2015. In the case presented by the first to fourth respondents for compensation on account of death of S. K. Chakraborty, the tribunal awarded compensation in the sum of Rs.42,15,328/- with interest @ 9% per annum from the date of filing of the detailed accident report (07.01.2012) till realization. The tribunal noted in the impugned

judgment that the second respondent herein, daughter of the deceased, had got married on 15.08.2010 before the accident. No compensation was granted in her favour. The compensation awarded was apportioned in the ratio of 70% in favour of the respondent and 15% each in favour of third and fourth respondent.

2. The insurance company preferred the appeal at hand under Section 173 of the MV Act, 1988 questioning the award on various grounds. By order dated 23.11.2015, notice was issued to the first to fourth respondents and the execution of the award was stayed subject to the appellant/insurance company depositing 75% of the awarded amount, out of which 50% was allowed to be released to the claimants in terms of the impugned award.

3. By way of the application at hand under Order 23 Rule 3 CPC, the insurance company and the first to fourth respondents have informed the court that they have amicably settled the matter. As per the compromise terms reached, the insurance company has agreed to pay Rs.48,00,000/- in lump sum as settlement amount in full and final discharge of its liability towards the claimants under the insurance policy. The first to fourth respondents by way of their respective affidavits annexed with application have affirmed that they have joined the insurance company in this application and have agreed to receive the amount of Rs.48,00,000/- which, learned counsel on both sides explained, includes the interest liability. The insurance company is represented in the application by Ms. Yogita Sharma, Assistant Manger (Legal), who has also affirmed affidavit in support.

4. In above facts and circumstances, the compromise terms, on which the parties have agreed and mutually settled the claim, are accepted. The impugned award is accordingly modified. It is directed that on the claim petition presented by the first to fourth respondents, they are entitled to receive ₹48,00,000/- in lump sum, which includes principal amount as well as the liability of interest, as compensation.

5. The tribunal, as noted above, had not apportioned any share in the compensation in favour of the second respondent herein. She did not challenge the said denial of share by way of any independent appeal. Rather, she has joined in the application for compromise. The award, as per the settlement now reached, shall be apportioned in accordance with terms directed by the tribunal in the impugned judgment.

6. The insurance company has undertaken to pay the compensation in terms of the aforementioned settlement by way of credit of the respective shares in the accounts of the first, third and fourth respondent, as stated in the application. The insurance company shall do so within 30 days of today, failing which the claimants will be entitled to take out appropriate execution proceedings, in which event the claimants shall be entitled to interest @ 9% per annum from the date of this order till realization.

7. The appeal and the application stand disposed of in above terms.

8. Statutory deposit, if made shall be refunded.

9. *Dasti* under signature of the Court Master.

R.K. GAUBA
(JUDGE)

FEBRUARY 02, 2016/ssc