

\$~4 & 5 (common order)

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

Decided on: 29th August, 2017

+ MAC.APP. 18/2016 and CM APPL.717/2016

NEW INDIA ASSURANCE CO.LTD. Appellant

Through: Mr. Ravinder Singh, Advocate with
Mr. Maheen Pradhan, Advocate

Versus

MONIKA & ORS Respondents

Through: Mr. Navneet Goyal, Advocate

+ MAC.APP. 245/2016 and CM APPL.10266/2016

MONIKA & ORS Appellants

Through: Mr. Navneet Goyal, Advocate

versus

PAPPU RAM & ANR (NEW INDIA ASSURANCE CO LTD)

..... Respondent

Through: Mr. Ravinder Singh, Advocate with
Mr. Maheen Pradhan, Advocate for
R-2.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Sanjeev Kumar Sharma, aged over 36 years (born on 26.06.1973), died due to injuries suffered in a motor vehicular accident that occurred on the intervening night of 09-10.08.2009 in the area of Sunderpur bus stand turning, Jind Road, Rohtak Sadar due to negligent driving of truck bearing registration No.RJ-02G-5518 by Pappu Ram (the driver), son of Dalu Ram, one of the respondents in

these appeals. His wife and other family members dependent upon him, they being appellants in MAC APP.245/2016 (collectively, the claimants) instituted accident claim case (MACT Case No.493/13/2010) on 20.03.2010, on which the tribunal held inquiry and, by judgment dated 15.10.2015, the claim for compensation on principle of fault liability was upheld, the liability to pay having been fastened on the New India Insurance Company Limited (insurer), it being appellant (in MAC APP.18/2016).

2. During the inquiry, the insurer had taken the plea of breach of terms and conditions of the insurance policy on the ground that the offending vehicle registered in the State of Rajasthan did not have a valid permit for the place where the accident occurred and also that it did not have any fitness certificate. The insurer led evidence by examining N.K. Saxena (R2W1), who proved notice under Order 12 Rule 8 of the Code of Civil Procedure, 1908 (CPC) having been issued by the insurer on 03.10.2013 (vide Ex.R2W1/2), it having been sent by registered post (vide receipts Ex.R2W1/3-4) calling upon the said Pappu Ram, impleaded as first respondent in the proceedings before the tribunal, to produce the permit and fitness certificate, but there having been no response thereto. The tribunal, however, declined to grant any benefit on the said basis.

3. The claimants have come up with appeal (MAC APP.245/2016) submitting that the loss of dependency has not been properly calculated as the income proved through income tax returns (ITRs) for the assessment years 2005-2006 to 2009-2010 (Ex.PW-1/5,

collectively) were not properly construed, the assessment having been made on the basis of net income, ignoring the gross income that had been declared for purposes of tax liability.

4. The insurer, on the other hand, has come up with an appeal (MAC APP.18/2016) reiterating its plea of breach of terms and conditions of the insurance policy and seeking the relief of recovery rights.

5. Pappu Ram, the driver-cum-owner of the offending vehicle, in spite of being served with notices in both the appeals has failed to appear and has chosen to suffer the proceedings *ex-parte*. It is noted that he had avoided participation in the proceedings even before the tribunal.

6. Having heard the learned counsel for the claimants and for the insurer, this court is of the opinion that both the appeal must be allowed.

7. The tribunal has indeed fallen in error by proceeding on the basis of net income declared in the ITRs for the five assessment years each indicating progressive rise in income. The gross income declared in these ITRs was Rs.90,909/-, Rs.1,06,495/-, Rs.1,11,189/-, Rs.1,86,735/- and Rs.2,36,397/- for the assessment years 2005-2006, 2006-2007, 2007-2008, 2008-2009 and 2009-2010 respectively. In these circumstances, the income for the said assessment year prior to the death it being for the Assessment Year 2009-2010, in the sum of Rs.2,36,397/- should have been treated as the bench mark. The calculation, therefore, will have to be made afresh.

8. The tribunal applied the multiplier of 15 and made deduction of one-fourth towards personal and living expenses, after adding the element of future prospects to the extent of fifty per cent (50%). There is no error in this approach. Thus, the loss of dependency on the correct income is re-computed as $(2,36,397/- \times 150/100 \times 3/4 \times 15)$ Rs.39,89,199/- rounded off to Rs.39,90,000/-.

9. Adding the medical expenses and other non-pecuniary damages awarded by the tribunal, the total compensation payable in the case comes to $(39,90,000/- + 6,09,898/- + 25,000/- + 1,00,000/- + 10,000/- + 1,00,000/-)$ Rs.48,34,898/- rounded off to Rs.48,35,000/- (Rupees Forty Eight Lakhs Thirty Five Thousand Only).

10. The award is modified accordingly. It shall carry interest as levied by the tribunal.

11. Given the apportionment already made in favour of the other claimants, it is directed that the entire enhanced portion of the award with corresponding interest shall fall to the share of Monika (widow), the first respondent (first claimant).

12. It is clear from the above discussion that the driver-cum-owner of the offending vehicle in spite of the opportunity given, not only by the tribunal but also in this appeal, has failed to come up to render any assistance. He had due notice of the obligation on his part to bring before the tribunal a valid permit and fitness certificate. Since he failed to produce any reply to the said notice under Order 12 Rule 8 CPC, it has to be assumed that there was no valid permit or fitness

certificate. In these circumstances, the breach of condition of the insurance policy has been brought home by the insurer.

13. Thus, while the liability to pay to the claimants as fastened by the tribunal will have to be discharged by the insurance company even in respect to the enhanced portion of award, it is granted recovery rights against the said driver-cum owner of the vehicle.

14. By order dated 08.01.2016 (on the file of MAC APP.18/2016), the insurance company had been directed to deposit the entire awarded amount, which deposit, in terms of order dated 24.02.2016, was to be made before the tribunal. The said deposited amount was released to the claimants in terms of order dated 27.05.2016. Thus, the insurance company will be obliged to pay the balance in terms of the modified award by requisite deposit with the tribunal within thirty (30) days, making it available to be released to the claimants. The amount thus deposited will be released to the first claimant (widow) in the form of fixed deposit receipt to be taken out from a nationalized bank for a period of seven years with right to draw periodic interest.

15. The statutory amount shall be refunded to the insurance company after proof is shown of the award having been satisfied.

16. Both the appeals along with accompanying applications stand disposed of in above terms.

17. *Dasti.*

R.K.GAUBA, J.

AUGUST 29, 2017

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