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

Decided on: 03rd August, 2017

\+ MAC.APP. 49/2017 and CM APPL.1714/2017 (stay)

M/S. THE UNITED INDIA INSURANCE COMPANY LIMITED ..... Appellant

Through: Mr. D.D. Singh, Adv. with Mr. Navdeep Singh, Adv.

Versus

KAVITA & ORS. ..... Respondents

Through: Mr. S.N. Parashar, Adv. for R-1 to R-5.
Mr. Sunil Kumar Tripathi, Adv. for R-7.

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

JUDGMENT (ORAL)

1. Ramesh, aged about 35 years, was driving swift car bearing registration No.HR-26-CD-9595 (hereinafter, "the Swift car") with his friend Uday Singh (PW-2) travelling as a passenger on 11.10.2014 returning to village Dighal in District Jhajjar, Haryana, having approached the Dighal village road from a junction with National Highway that connects District Rohtak with District Jhajjar, at about 6:30 p.m. when the said Swift car came to be involved with a collision with a Scorpio car bearing registration No.HR-46C-3534 (hereinafter, "the Scorpio car") driven by the sixth respondent, it being registered

in the name of the seventh respondent and admittedly insured against third party risk with the appellant insurance company. As a result of the injuries suffered, he died. His wife and other members of the family dependant on him, they being first to fifth respondents (collectively, the claimants) instituted accident claim case (MAC Petition No.243/2016) seeking compensation on the allegations that the accident had occurred due to negligent driving of the Scorpio car by the sixth respondent. The said sixth respondent with the owner (seventh respondent) and the insurer (the appellant) of Scorpio car, were impleaded as respondents to the claim petition.

2. The Motor Accident Claims Tribunal (the tribunal) held inquiry and, on the basis of evidence led returned findings, by judgment dated 19.10.2016, upheld the claim of the claimants to the effect that the fatal accident had occurred due to negligent driving of the scorpio car by the sixth respondent. It assessed the compensation thus:-

Sl.No.	**Head**		**Amount in (Rs.)**
1.	Loss of dependency		18,00,000/-
2.	Loss of consortium		1,00,000/-
3.	Loss of love and affection		1,00,000/-
4.	Loss of estate		25,000/-
5.	Funeral expenses		25,000/-
		Total	20,50,000/-

3. The insurance company was directed to pay the amount of compensation with interest @ 12% per annum from the date of filing of the petition till realization.

4. The insurer, by the appeal at hand, has questioned the finding on the issue of negligence, its plea being that since the accident had occurred due to head-on collision, the deceased was also guilty of contributory negligence and, thus, deduction to the extent of fifty percent (50%) should have been made.

5. It is clear from the copy of the site plan (page 189 of the tribunal's record) that was prepared by the investigating police officer that the accident had taken place close to the junction of the Highway connecting District Jhajjar and Rohtak on a road connecting village Dighal with village Ritholi. Going by the evidence of PW-2, who was travelling as a passenger in the car driven by the deceased, and the evidence of the seventh respondent (R3W1), deposing at the instance of the insurer that both the cars had approached the said junction of roads from different directions. While the Scorpio car was moving from South to North, the Swift car was moving on the road diognally in the direction of village Dighal. The very fact that the deceased was approaching the junction of the highway from a side road should have put him to caution. It was his bounden duty to first be vigilant about the traffic coming from the other directions and then to venture into the junction in the attempt to cross over to the side of village Dighal. At the same time, it was also the duty of the Scorpio car driver (sixth respondent) to be watchful, particularly at the junction of the two

roads where traffic was concededly moving from the sides as well merging into the traffic on the Highway.

6. In these circumstances, the plea of the insurer that both drivers were guilty of negligence must be accepted. Given the facts set out in the evidence, however, the contributory negligence on the part of the deceased is assessed at twenty percent (20%), the award requiring deduction to that extent.

7. The next contention urged by the insurer is that the evidence with regard to the income of the deceased on the basis of a solitary document (Ex.PW-3/1) showing sale of farm produce (rice) should not have been accepted. The learned counsel for the claimants submitted that he would not insist on assessment of the income on such basis and would rather urge that minimum wages payable to a Matriculate on the date of accident may be taken as bench mark.

8. Given the fact that the evidence on record confirms that the deceased was a matriculate, the minimum wages payable to a matriculate during the relevant period Rs.10,478/- per month are assumed as the income of the deceased. Since there are five claimants, deduction to the extent of one-fourth requires to be made for calculating the loss of dependency. Thus, the loss of dependency is re-computed as (10,478/- x 3/4 x 12 x 16) Rs.15,08,832/- rounded off to Rs.15,09,000/-.

9. It is noted that the non-pecuniary damages awarded by the tribunal are inadequate.

10. Having regard to the date of accident (11.10.2014), and following the view taken in MAC.APP.No.160/2015 *Shriram General Insurance Co Ltd v. Usha* decided by this court on 05.05.2016, non-pecuniary damages in the sum of Rs.1,50,000/- each towards loss of love & affection and towards loss of consortium and Rs.50,000/- each towards loss of estate and funeral expense are added.

11. Hence, the total compensation is assessed at (15,09,000/- + 1,50,000/- + 1,50,000/- + 50,000/- + 50,000/-) Rs.19,09,000/-. Deducting twenty percent (20%) towards contributory negligence, the compensation payable to the claimants is computed as (19,09,000/- x 80/100) Rs.15,27,200/- rounded off to Rs.15,28,000/-.

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

13. It is noted that the tribunal has distributed the compensation by specifying the amounts in favour of first to fourth respondents. Since the amount of compensation has been reduced, the apportionment needs to be made afresh. It is directed that ten percent (10%) of the awarded amount with corresponding interest shall fall to the share of second, third and fourth respondent and the entire balance to go to the first respondent (widow).

14. The insurance company had been directed by order dated 16.01.2017 to deposit the entire awarded amount with interest with the tribunal within the period specified. It shall now release the amount to

the respective claimants in terms of the modified award, refunding the excess amount to the appellant insurance company.

15. The statutory amount shall also be refunded to the appellant insurance company.

16. The appeal along with pending application stands disposed of in above terms.

R.K.GAUBA, J.

AUGUST 03, 2017
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