$~R-466 & 466A

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 10th November, 2017

\+ MAC.APP. 235/2012

FUTURE GENERALI INDIA INSURANCE CO LTD

..... Appellant

Through: Mr. Arihant Jain for Ms. Shantha Devi Raman, Adv.

versus

SUMAN GOSWAMI & ORS ..... Respondents

Through: Mr. Navneet Goyal, Adv. for R-7.

\+ MAC.APP. 163/2013

ABHISHEK SETHI ..... Appellant

Through: Mr. Navneet Goyal, Adv.

versus

SUMAN GOSWAMI & ORS ..... Respondents

Through: Mr. Arihant Jain for Ms. Shantha Devi Raman, Adv. for R-7.

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

JUDGMENT (ORAL)

1. Prakash Goswami, a driver by profession, then aged 36 years, died as a result of injuries suffered in motor vehicular accident that occurred on 21.08.2008, statedly due to collision between motorcycle bearing registration no. DL 8S AH 9873 (the motorcycle) and scooter

bearing registration no. DL 8SS 8831 (the scooter). The deceased was riding on the motorcycle while the scooter is stated to have been driven by Vipul Mehta (a respondent in these appeals).

2. Suman Goswami, wife of the deceased, with four other members of the family dependent on him (collectively, the claimants), instituted accident claim case (MACT Case No. 265/10/08) on 24.09.2008 seeking compensation on the averments that the death had occurred due to negligence on the part of scooterist Vipul Mehta. The said claimants are respondents in these appeals (first to fifth respondents).

3. The tribunal held inquiry and, by judgment dated 13.01.2012, returned a finding that the accident and death had occurred due to negligence on the part of the scooterist holding him (driver) and Abhishek Sethi (appellant in MAC Appeal No. 163/2013) jointly and severally liable to pay compensation, the latter being admittedly the registered owner of the scooter.

4. The scooter was concededly insured against third party risk with Future Generali India Insurance Co. Ltd (insurer) which is the appellant in MAC Appeal No. 235/2012 and seventh respondent in MAC Appeal no. 163/2013.

5. The tribunal awarded compensation in the total sum of Rs. 15,30,000/- in favour of the claimants, calculating it thus:-

S.No.	**Heads**	**Compensation**
1.	Loss of dependency	Rs. 13,50,000/-

2.	Funeral charges	Rs. 10,000/-
3.	Loss of estate	Rs. 10,000/-
4.	Loss of consortium	Rs. 10,000/-
5.	Loss of company of deceased	Rs. 50,000/-
6.	Loss of love and affection	Rs. 1,00,000/-
	Total	Rs. 15,30,000/-

6. The liability to pay the compensation to the claimants was fastened initially on the insurer, though it was granted recovery rights against the registered owner of the scooter on the basis of finding that the scooter driver was not holding a valid or effective driving licence at the relevant point of time.

7. The insurer, by its appeal (MAC Appeal No. 235/2012), has questioned the impugned judgment of the tribunal on the ground that the income of Rs. 10,000/- of the deceased was wrongly accepted to calculate the loss of dependency and that the awards under the non-pecuniary heads of damages are excessive. It also submits that in view of the evidence led to show that the driving licence relied upon by the driver and owner was fake, instead of being called upon to pay it should have been exonerated.

8. On the other hand, the registered owner of the scooter, by his appeal (MAC Appeal no. 163/2013), also questions the computation of compensation on above grounds and submits that negligence was not strictly proved.

9. Having heard the learned counsel for the insurer and the owner of the scooter, and having perused the tribunal's record, this Court

finds no good ground to disturb the findings returned by the tribunal about the negligence on the part of the scooter driver. Though the allegation of negligence had been disputed by the scooter driver there was virtually no contest at the time of the inquiry. The tribunal, it is seen, has gone by the principle of *res ipsa loquitur* and has returned a finding on the issue of negligence which consequently does not call for any interference, particularly in the face of the fact that there was no effort made to examine the scooter driver to bring out facts to the contrary.

10. The evidence of D.K. Devgan (PW-2), employer of the deceased, about his engagement with him as a driver at a salary of Rs. 10,000/- per month was not challenged by any effective cross-examination. There is not even a remote suggestion given to him that his deposition was false. In these circumstances, the plea now taken to question the loss of dependency is unacceptable.

11. In view of the ruling of the Constitution Bench of the Supreme Court rendered on 31.10.2017 in SLP (C) 25590/2014, *National Insurance Company Ltd. Vs. Pranay Sethi and Ors.,* however, the objection to the non-pecuniary heads of damages must be accepted. Instead of awards granted by the tribunal, under the above-mentioned heads, Rs. 15,000/- each towards loss to estate and funeral expenses and Rs. 40,000 on account of loss of consortium are granted. This would mean the total compensation would stand reduced by (1,80,000- 70,000) Rs. 1,10,000/-.

12. The total award of compensation is, thus, reduced to (15,30,000-1,10,000) Rs. 14,20,000/- (Rupees Fourteen Lacs and Twelve Thousand Only). The award is modified accordingly.

13. On the issue of recovery rights, the registered owner has argued that there was no notice received under Order XII Rule 8 of the Code of Civil Procedure, 1908 (CPC), as was sought to be established through the evidence of R3W2. It is noted, however, that when the said witness was examined, the deposition was not challenged by the registered owner as he would not even participate in the inquiry. The evidence of the insurer in this regard has gone unimpeached. It may also be added that R3W1 has also proved that the driving licence, copy whereof was presented, was found to be fake. In these circumstances, there is no escape for the registered owner from the recovery rights.

14. The plea of the insurer that instead of being asked to pay and then granted right to recover, it should have been totally exonerated, cannot also be accepted as the third party interest cannot be defeated. Since the interests of the insurer are duly protected, it should not grudge the statutory responsibility placed at its door.

15. By order dated 05.03.2012 in MAC Appeal No. 235/2012, the insurance company had been directed to deposit 80% of the awarded amount with the Registrar General. By subsequent order dated 27.05.2013, 50% of the amount thus deposited was permitted to be released to the claimants. In terms of further directions by order dated 01.09.2014, another sum of Rs. 1,00,000/- was released to the first claimant.

16. The registry shall now calculate the amount payable to the claimants under the modified award and release the balance from the remainder, refunding the excess, if any, to the insurer. Conversely, if there is any deficiency in the payment, the insurer will be liable to make the same good by requisite deposit with the tribunal within thirty days to be made available to be released to the claimants.

17. The insurer may exercise its recovery rights by taking out appropriate proceedings before the tribunal.

18. Statutory amount made by the insurer shall be refunded up on proof of deposit being shown.

19. The appeals are disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 10, 2017
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