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

Decided on: 22nd August, 2017

\+ MAC.APP. 175/2013

NATIONAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. Pankaj Seth, Advocate

versus

RAJ BALA & ORS. ..... Respondents
Through: None.

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

JUDGMENT (ORAL)

1. Yashpal Singh, a constable in Delhi Police, suffered injuries in a motor vehicular accident that occurred on 01.09.2009, near property no. 8 Akbar Road, New Delhi, due to negligent driving of car bearing registration no. UP 14AT 2940, admittedly insured against third party risk with the appellant insurance company (insurer). His wife and other members of the family dependent upon him, they being first to fourth respondents (collectively, the claimants), instituted accident claim case (suit no. 68/2010) on 30.09.2009 seeking compensation.

2. The tribunal upheld the said claim, by judgment dated 25.09.2012, and awarded compensation in the sum of Rs. 38,60,200/-

directing the insurance company to pay with interest @ 9% per annum from the date of filing of the petition till realization. The insurance company had raised the defence of breach of terms and conditions of the policy on the ground that the driver of the offending vehicle was not holding a valid driving licence since the licence held by him was for a light motor vehicle (non-transport) whereas the vehicle in question was light motor vehicle (transport). This plea was rejected by the tribunal.

3. The appeal by the insurer is pressed on the question of computation of loss of dependency on the ground it was incorrect for the tribunal to take into account the allowances over and above the basic pay, grade pay and dearness allowance as reflected in pay slip (Ex.PW-2/A). It is also the prayer of the insurance company that on the facts mentioned above, it be granted recovery rights against the owner and driver. The above grounds of the insurance company need to be only noted and rejected.

4. The allowances reflected in the pay slip (Ex.PW-2/A) were regular emoluments of the deceased. Though some of them may be personal in nature, they would result in corresponding savings and, therefore, the benefit thereof cannot be denied.

5. The fact that the driving licence was not valid for transport vehicle will not make a difference as the rule of main purpose and concept of fundamental breach applies. [See *National Insurance Company vs. Swaran Singh* (2004) 3 SCC 297].

6. The insurance company had been directed by order dated 22.02.2013 to deposit the awarded amount with upto date interest

within four weeks of the said order and out of such deposit 70% was allowed to be released. The registry shall now release the balance lying in deposit to the claimants in terms of the impugned judgment.

7. Statutory deposit shall be refunded.

R.K.GAUBA, J.

AUGUST 22, 2017
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