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

Decided on: 23rd October, 2017

+ MAC.APP. 131/2017 & CM No. 8735/2017

THE NEW INDIA ASSURANCE CO LTD Appellant

Through: Mr. Pramod K. Singh, Adv.

versus

SUSHILA TYAGI & ORS Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On accident claim case (MACT 328/2011 - MACT new no. 14689/15) of first to fourth respondents (collectively the claimants), the Motor Accident Claims Tribunal (tribunal), by judgment dated 30.11.2016, awarded compensation in the total sum of Rs. 26,18,200/- on account of death of Shiv Kumar Tyagi, a businessman, aged 40 years, in motor vehicular accident that had occurred on 03.10.2010 due to negligent driving of motor vehicle bearing registration no. GL-12V-6515, admittedly insured against third party risk with the appellant Insurance Company (insurer) fastening the liability on the latter to pay the said amount with interest at the rate of 9% per annum from the date of filing of claim case i.e. 09.08.2011, the said amount inclusive of Rs. 22,93,200/- towards loss of dependency.

2. The insurer presses the appeal questioning the afore-said computation on the ground that in calculating the loss of dependency, the Tribunal fell into error by not making deduction on account of Income Tax liability, placing reliance on *Shashikala Vs. Gangalakshmamma (2015) 9 SCC 150*.

3. It is noted that the claimants had proved two Income Tax returns (ITR's), one for the year 2006-07 and other for 2008-09, the latter indicating gross total income of Rs. 1,68,000/-. It is noted that in the ITR for assessment year 2008-09, the tax liability, is indicated as Rs. 447/- only. Having regard to paltry sum on account of Income Tax liability for the relevant year, in opinion of this Court, the deduction of such amount will not make any difference to the calculations that have been otherwise correctly made by the Tribunal. The reliance on *Shashikala (Supra)*, particularly the observations in Para 15 of the said judgment, seems misplaced in that there cannot be a thumb rule, as was sought to be argued, that in every case 10% of the total income is to be deducted towards Income Tax. For purposes of discounting of tax liability, the prevalent tax rates will have to be borne in mind.

5. The appeal is thus, found devoid of substance and dismissed.

6. In terms of order dated 21.02.2017 read with order dated 03.03.2017, the Insurance Company was obliged to deposit the entire awarded amount with interest with the Tribunal and out of such deposit, 50% was allowed to be released, the balance kept in fixed deposit receipts. The Tribunal shall now release the remainder to the claimant in terms of the impugned judgment.

7. The statutory amount shall also be refunded.

R.K.GAUBA, J.

OCTOBER 23, 2017
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