$~R-464

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

Decided on: 10th November, 2017

\+ MAC APPEAL No.223/2012

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD ... Appellant

Through: None.

versus

KISHORE SINGH & ORS. ..... Respondents

Through: None.

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

JUDGMENT (ORAL)

1. Anu Singh, 45 years old, statedly working for gain as a beautician, died as a result of injuries suffered in a motor vehicular accident that took place on 12.05.2008, on account of negligent driving of Eicher truck bearing registration no. HR 38M 3186, admittedly insured against third party risk with the appellant (insurer) for the period in question at the instance of its owner (sixth respondent). On the accident claim case (suit no. 534/2010/2009), instituted on 20.07.2009, the tribunal held inquiry and, by judgment dated 19.11.2011, returned a finding that the accident and death had occurred due to negligence on the part of fifth respondent who was the driver of the said truck.

2. The tribunal awarded compensation in the total sum of Rs. 4,53,000/-, it inclusive of loss of dependency of Rs. 3,78,000/- directing the insurer to pay the amount but accepting its plea of breach of terms and conditions of the insurance policy granted it recovery rights against the fifth and sixth respondents.

3. The appeal was filed, *inter alia,* questioning the calculation of loss of dependency and the directions to pay and then recover.

4. The appeal was put in the category of 'regulars', to come up on its own turn as per order dated 02.02.2016. When it is called out, and taken up for hearing there is no appearance on behalf of the appellant. On perusal of the record, this Court finds no error in the computation of compensation. The tribunal has assumed the notional income with the help of minimum wages and on such basis calculated the loss of dependency. The plea raised in the appeal for total exoneration cannot be accepted as third party interest cannot be defeated. The rights of the insurance company having been protected by the recovery rights, it is not fair on its part to question the approach of the tribunal in this regard.

5. The appeal is dismissed.

6. By order dated 29.02.2012, the insurance company had been directed to deposit the entire awarded amount with upto date interest with the Registrar General. By subsequent order dated 27.02.2013, 50% of the said amount was permitted to be released to the claimants. The balance lying in deposit shall also now be released to the claimants.

7. Since the insurance company has failed to assist at the hearing, the statutory deposit shall be made over by the registry as costs to the Delhi High Court Legal Services Committee.

R.K.GAUBA, J.

NOVEMBER 10, 2017
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