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

Decided on: 14th July, 2017

+ MAC.APP. 243/2008 and CM APPL.5495/2008

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

versus

KUMARI ASHA K.THOMAS & ORS Respondents
Through: Mr. Thomas Oomen, Advocate
for R-1 to R-4.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Thomas K. Koshy (born on 20.12.1946), aged about 55 years, working as lower division clerk (LDC) with Border Roads Organization (BRO) at the then emoluments of Rs.6600/-, as assessed by the Motor Accident Claims Tribunal (the Tribunal), died as a result of the injuries suffered in a motor vehicular accident which occurred on 24.04.2002, statedly due to negligent driving of taxi bearing registration no.HR-55T-8750, admittedly insured against third party risk with the appellant insurance company (insurer). His wife, three daughters and father jointed together to institute accident claim case (suit No.352/2002) before the Motor Accident Claims Tribunal (the tribunal), during the pendency of which the wife died, the case being prosecuted further by the other claimants.

2. The tribunal upheld the case of the claimants that death had occurred due to negligent driving of the taxi driver and awarded compensation in the sum of Rs.6,90,000/-, it inclusive of loss of dependency calculated at Rs.6,33,600/-, besides Rs.20,000/- as composite damages on account of loss of consortium and loss of love and affection with Rs.15,000/- towards cremation charges and Rs.21,000/- as actual medical expenses.

3. The insurer, in the course of contest, had pointed out to the tribunal that the licence for driving issued in favour of fifth respondent (though for light motor vehicle) (LMV) did not have endorsement necessary for he to be permitted to drive a taxi (a commercial transport vehicle). The tribunal declined to exonerate the insurance company on such ground holding that the licence for LMV would hold good for a taxi.

4. The insurer is in appeal pressing it on two grounds. It is submitted that, in calculation of the loss of dependency, the element of 50% future prospects has been added which given the age (55 years) of the deceased was unjustified. It is also submitted that the plea of the insurance company respecting the breach of terms and conditions of the policy should have been accepted and it should have at least been granted recovery rights.

5. *Per contra*, the counsel for the claimants submitted that the award of non-pecuniary damages is inadequate. The counsel submits that he has nothing to say on the plea respecting breach of terms and conditions of the policy.

6. The plea of the insurance company respecting breach of the terms and conditions of the policy does not impress this court in view of dicta in *National Insurance Company V. Swaran Singh* (2004) 3 SCC 297 and *New India Assurance Company Limited vs. Arvinder Kaur & Ors.*, MAC APP.32/2006, decided on 17.02.2016.

7. It is noted that the deceased was in regular government employment, he being a clerk in Border Roads Organization. The evidence clearly shows that his service conditions would result in progressive rise in income for the remainder of his service had he not died. In the face of such cogent and irrefutable evidence, the element of future prospects is bound to be factored in. But given the age (55 years), it could not have been more than 15%. [see: judgment dated 28.03.2016 in MAC.APP. 548/2013 *United India Insurance Co. Ltd. v. Kamla & Ors.*].

8. In this view, the loss of dependency is re-calculated as $(6600/- \times 115 \div 100 \times 3 \div 4 \times 11 \times 12)$ Rs.7,51,410/- rounded off to Rs.7,52,000/-. In this view, the loss of dependency is found to have been under assessed by the tribunal rather than being awarded in excess.

9. The contention of the claimants about the inadequacy of non-pecuniary damages is also correct. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, compensation in the sum of Rs.1 lakh each on account of loss of love & affection and loss of consortium and Rs.25,000/- each towards loss of estate and funeral expense are added. Taking into account the actual medical

expenses (Rs.21,000/-), the total compensation which should have been awarded in the case is worked out as (7,52,000/- + 1,00,000/- + 1,00,000/- + 25,000/- + 25,000/- + 21,000/-) Rs.10,23,000/-.

10. The award is modified accordingly. Needless to add, it shall carry interest as levied by the tribunal.

11. While admitting the appeal, by order dated 11.04.2008, the appellant had been directed to deposit 75% of the awarded amount with interest with the tribunal, balance 25% along with interest to be kept in fixed deposit receipt, initially for a period of one year. Since the compensation has been enhanced, the balance amount shall also be released to the claimants.

12. The apportionment of the award, as directed by the tribunal, shall remain undisturbed. The enhanced portion, however, shall be equally divided amongst four claimants with proportionate interest. The entire enhanced portion shall be kept in the form of fixed deposit receipts in a nationalized bank in their respective names for a period of three years with right to draw periodic interest.

13. The statutory amount shall be refunded on satisfaction of the award.

14. The appeal and the pending application are disposed of in above terms.

R.K.GAUBA, J

JULY 14, 2017/vk