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

Decided on: 25th September, 2017

\+ MAC.APP. 640/2012

KANHIYA LAL DUGGAL ..... Appellant

Through: Mr Akshay Bhandari for Mr. Rohit Nagpal, Advocate

versus

MANJU GUPTA & ORS ..... Respondents

Through: Mr. Jatinder Kamra, Advocate for R-1 to 5
Mr. Pankaj Gupta for Ms. Suman Bagga, Advocate for R-7
Mr. Shoumik Mazumdar, Adv. for R-10

\+ MAC.APP. 320/2010

MANJU GUPTA & ORS ..... Appellants

Through: Mr. Hitender Kapur, Advocate

versus

KANHIYA LAL DUGGAL & ORS ..... Respondents

Through: Mr. Pankaj Gupta for Ms. Suman Bagga, Advocate for R-2
Mr. Shoumik Mazumdar, Adv. for R-5

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

<u>JUDGMENT (ORAL)</u>

1. Parveen Kumar was travelling in a Scorpio car bearing registration no.DL-3C-AH 3000 with Gurvinder Singh on 13.09.2007, it being driven by Kanhiya Lal Duggal (appellant in MACA 640/2012) (hereinafter referred to as the "car driver") who is also the owner of the car. The car came to be involved in a collision at about 1.45 a.m. at T Point Junction on Ring Road, Bhairon Road, New Delhi with a truck bearing registration no.HR-55A-6289 (the truck) driven by the respondent Shyam Singh. It (the car) was insured against third party risk for the relevant period with ICICI Lombard General Insurance Co. Ltd. ("insurer of the car") while the truck was insured against third party risk with National Insurance Company Ltd. ("insurer of the truck"), both companies being respondents in these appeals. Parveen Kumar died as a result of the injuries suffered.

2. Two accident claim cases were instituted, one (suit no.1666/2007), by the widow and the other members of the family dependent on Parveen Kumar, they being appellants in MACA 320/2010, and, the other (suit no.1668/2007), by Gurvinder Sigh seeking compensation for injuries suffered by him. Both the claim cases were clubbed by the tribunal and on the basis of the evidence led, decided by a common judgment dated 09.12.2009. The tribunal concluded that the car driver was negligent in that it had jumped red traffic signal coming in the way of the truck. It also held the truck driver negligent in that he could have avoided the accident by slowing down. The contributory negligence on the part of the drivers of both the vehicles was apportioned in the ratio of 60:40 amongst the car driver and the truck driver.

3. In the claim on account of the death of Parveen Kumar, compensation in the total sum of Rs.10,92,000/- was awarded, it being the amount calculated under the head of loss of dependency, on the basis of notional income of Rs.9,750/- calculated after factoring in the element of future prospects of increase in income to the extent of 30% and making a deduction of one-third towards personal and living expenses invoking the multiplier of 14.

4. The insurer of the car had raised a plea of breach of the terms and conditions of the insurance policy. It led evidence by examining Jai Singh (RW1) to show that the car driver Kanhiya Lal Duggal (appellant in MACA 640/2012) was not holding a valid or effective driving licence. This plea was accepted and, therefore, the insurer of the car was exonerated, the responsibility to pay having been fastened on Kanhiya Lal Duggal (appellant in MACA 640/2012) to the extent of his liability.

5. The claimants in the death case, by their appeal (MACA 320/2010), seek enhancement of the compensation, pressing the said prayer on two counts; one, that the tribunal ignored the fact that there were five claimants on which account deduction towards personal and living expenses should have been to the extent of one-fourth and, second, that the award is deficient since no compensation under the non-pecuniary heads of damages has been added.

6. The car driver (who is also the owner), Kanhiya Lal Duggal (appellant in MACA 640/2012) is aggrieved with the insurer having been relieved pointing out that the evidence led by the latter concerned a different licence, insisting that he was holding a valid and effective

driving licence, copy whereof has been submitted as Annexure P-8 (page 55 of the paper book in MACA 640/2012).

7. The contentions of the claimants in the death case deserve to be accepted. Since the evidence showed that five members of the family were dependent on the deceased Parveen Kumar, the deduction should have been to the extent of one-fourth towards personal and living expenses. Thus, the loss of dependency is re-calculated as [Rs.9,750/- x 3 /4 x 12 x 14] Rs.12,28,500/-, rounded off to Rs.12,29,000/- (Rupees Twelve Lakh and twenty nine thousand only).

8. Following the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54 and Shashikala V. Gangalakshmamma (2015) 9 SCC 150*, the compensation in the sum of Rs.1,00,000/- each towards loss of love and affection and loss of consortium and Rs.25,000/- each towards loss to estate and funeral expenses are added.

9. Thus, the total compensation comes to [Rs.12,29,000/- + Rs.1,00,000/- + Rs.1,00,000/- + Rs.25,000/- + Rs.25,000/-] Rs.14,79,000/- (Rupees Fourteen Lakhs and seventy nine thousand only).

10. It is noted that the tribunal had apportioned the amount of compensation awarded by it, specifying the share of each claimant. It is directed that the entire enhanced portion of the award with corresponding interest as levied by the tribunal shall fall to the share of the first appellant (widow) alone, it to be released to her in the form of an interest bearing fixed deposit receipt taken out from a nationalized bank in her name for a period of seven years with right to draw periodic interest.

11. In the appeal of the car driver-cum-owner (MACA 640/2012), the insurer of the car had submitted on 28.02.2013 that it required time to submit verification report. It is noted that adjournments on this ground were taken on subsequent dates as well. However, no verification report has been submitted. It is noted that the evidence of RW-1 examined by the insurer was primarily based on the report of the Motor Licensing Officer, Mayur Vihar (RW-1/A) concerning licence no.94120235. The licence on which Kanhiya Lal Duggal (appellant in MACA 640/2012) has been relying bears the number 94120233. Apparently, the insurance company of the car misled the tribunal by a report concerning a different licence. Since, despite having taken adjournments, it has not come with any further report, it is clear that it is not in a position to refute the contentions of Kanhiya Lal Duggal (appellant in MACA 640/2012) in his appeal.

12. The exoneration of the insurer of the car by the impugned judgment is thus set aside. It is directed that the liability in terms of the impugned judgment on account of negligence of the car driver shall be borne by the insurer of the car.

13. The insurers of both the vehicles are directed to satisfy the award (as modified) in terms of the liability apportioned amongst them by the impugned judgment by requisite deposits with the tribunal within 30 days making it available to be released to the claimants. The appellant in MACA 640/2012 had been directed by order dated 31.05.2012 to deposit Rs.4,00,000/- as a pre-condition to the stay against execution. It was directed to be converted into a fixed deposit receipt by order dated 17.09.2012. The said deposited amount with

accrued interest thereupon shall be refunded to Kanhiya Lal Duggal (appellant in MACA 640/2012).

14. The statutory amount, if deposited, shall be refunded.

15. Both appeals are disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 25, 2017

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