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

Decided on: 23rd August, 2017

\+ MAC.APP. 210/2017 and CM APPL.9032-9033/2017

NEW INDIA ASSURANCE COMPANY LTD..... Appellant

Through: Ms. Meha Aggarwal, Advocate with Mr. Pranati Bhatnagar, Adv. & Mr. Gaurav Nair, Adv.

versus

JYOTI PRAJAPATI & ORS ..... Respondents

Through: Mr. Dinesh Kumar, Advocate with Mr. Rakesh Kumar, Adv. for R-1 to R-4.

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

JUDGMENT (ORAL)

1. Rajesh Kumar, aged 29 years, employed as Store Manager with a private entity, suffered injuries in a motor vehicular accident that statedly occurred due to negligent driving of truck bearing registration No.HR-69A-8456 on 06.07.2014. The truck was admittedly insured against third party risk with the appellant insurance company (insurer). The wife and other members of the family dependent on the deceased, they being first to fourth respondents (collectively, the claimants), instituted accident claim case (Suit No.3860/2016) on 09.09.2014. The said case and another fatal accident claim case also arising out of the same accident were clubbed and on the basis of inquiry were decided

by common judgment of the tribunal rendered on 21.11.2016 whereby compensation in the total sum of Rs.87,35,000/- (Rupees Eighty Seven Lakhs Thirty Five Thousand Only) was awarded, the liability having been placed at the door of the appellant insurance company to pay with interest @ nine per cent (9%) per annum.

2. The insurer has pressed the appeal at hand on two counts; one, that the component of conveyance allowance at Rs.800/- per month was wrongly included in income while calculating the loss of dependency and, second, that in such computation deduction on account of income tax liability was not made.

3. Having heard the learned counsel and having gone through the record, this court finds no substance in either of the two contentions.

4. The insurer has relied on *National Insurance Company Limited vs. Indira Srivastava & Ors., (2008) 2 SCC 763,* wherein it was ruled that the amount which was required to be paid to the deceased by his employer by way of perks should be included for computation of his monthly income as that would have added to his monthly income by way contribution to the family as contradistinguished to the ones which were for his benefit. The allowance of Rs.800/- per month towards conveyance, as per the evidence led, was a regular emolument, it being part of the terms and conditions of the service, the said allowance insuring ensuing to the benefit of corresponding savings for the family, and, therefore, there is no good reason why it should have been excluded.

5. The tribunal has taken care to make deduction of tax on income going by the tax deducted at source certificate (Form 16) for the Assessment Year 2013-2014, which was the last financial year just preceding the date of death. Therefore, there is no error in the computation.

6. The appeal is dismissed.

7. The insurance company had deposited the entire awarded amount with interest in terms of order dated 06.03.2017 from which a portion was allowed to be released by order dated 03.05.2017, the balance kept in fixed deposit receipts in terms of the impugned award. Some correction in the name of the mother, one of the recipients was allowed by direction in the order dated 03.05.2017. The tribunal shall now release the balance amount in terms of the impugned award.

8. The statutory amount shall be refunded to the appellant insurance company.

9. The appeal along with accompanying applications stands disposed of in above terms.

10. *Dasti.*

R.K.GAUBA, J.

AUGUST 23, 2017
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