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

Decided on: 04th September, 2017

+ MAC.APP. 230/2016 and CM 8897/2016

ICICI LOMBARD GENERAL INS. CO LTD Appellant

Through: Mr. Garud M.V., Advocate

versus

JOHRI LAL & ORS

..... Respondents

Through: Mr. Naushad A. Khan, Adv.for R-
1 to 5

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Ram Bai @ Rama Bai, widowed mother of the first to fifth respondents (collectively, the claimants) died in a motor vehicular accident that occurred on 09.06.2010 due to negligent driving of a motorcycle bearing registration no.DL-8SAS-7687, admittedly insured against third party risk with the appellant / insurance company (insurer). The accident claim case (suit no.379/2010), instituted by the said respondents (claimants) on 14.07.2010 resulted in an award of compensation in the sum of Rs.4,77,514/- given by the tribunal by its judgment dated 15.01.2016, the liability having been fastened on the insurer to pay with interest at the rate of nine per cent (9%) per annum. At the same time on the basis of finding that the driver of the

offending vehicle, *i.e.*, sixth respondent (Kamal Kumar) was not in possession of a valid and effective driving licence at the relevant point of time, recovery rights have been granted against him in favour of the insured.

2. The insurer is in appeal questioning the computation of the award which includes Rs.3,32,514/- calculated towards loss of dependency. It is the argument of the insurer that the age of the deceased was wrongly assumed to be 65 years, which resulted in erroneous adoption of the multiplier of 7 and that the first claimant (first respondent) while appearing in the evidence as a witness (PW-1) had admitted that none of the claimants was dependent financially on the earning of the deceased mother. The insurer places reliance on the decision of a learned single judge of this court in *Keith Roe Vs. Prashant Sagar and Ors.*, 2011 ACJ 1734 which followed the decision of a division bench of Karnataka High Court reported as *A. Manavalagan vs. A. Krishnamurthy & Ors.*, 1(2005) ACC 304 (DB) to contend that in such a case the award under the head of loss of dependency was impermissible and instead the compensation should have been computed assuming it to be a case of loss of estate.

3. Having heard the learned counsel for the appellant and the claimants and having gone through the tribunal's record, this court finds merit in the contention of the insurer with regard to the finding on the age of the deceased. PW-1 had testified that his mother was 65 years old at the time of accident. This obviously could not be the correct age in as much as he gave his own age as 60 years on 27.02.2015 which would render him a person aged about 55 years

when the accident occurred. In these circumstances, it is obvious that the deceased was above the age of 65 years, and therefore, the multiplier of 5 should have been adopted for calculating the compensation payable.

4. The exception taken by the insurer to the award under the head of loss of dependency also must be accepted. Indeed, none of the claimants were financially dependent on the deceased mother (who was a widow), all of them being well settled in their respective lives. At the same time, however, it cannot be ignored that the loss of estate is required to be properly computed, the lumpsum award of Rs.20,000/- under the said head being inappropriate.

5. Having regard to the composition of the family, the status of the mother as the head, she also being an earning hand, the calculation of loss of estate deserves to be on the basis of assumption that she would be saving 50% of her earnings for the benefit of the family. By these calculations, the loss to estate is calculated as $[Rs.5,278/2 \times 12 \times 5]$ Rs.1,58,340/-, rounded off to Rs.1,59,000/-. (Rupees One Lakh and fifty nine thousand only).

6. Having regard to the date of the accident, the awards under the heads of loss of love and affection and funeral expenses are found inadequate and, therefore, the same are increased to Rs.1,50,000/- and Rs.50,000/- respectively.

7. Thus, the total compensation in the case is computed as $[Rs.1,59,000/- + Rs.1,50,000/- + Rs.50,000/-]$ Rs.3,59,000/- (Rupees Three Lakh and Fifty nine thousand only). The award is modified

accordingly. Needless to add, it shall carry interest as levied by the tribunal.

8. By order dated 11.03.2016, the insurance company had been directed to deposit the entire awarded amount with interest which was directed to be kept in fixed deposit receipt. The Tribunal shall release, from out of such deposit, the amount payable to the claimants in terms of the modified award, refunding the excess with corresponding interest to the appellant.

9. The statutory amount shall also be refunded.

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

SEPTEMBER 04, 2017

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R.K.GAUBA, J.