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

Decided on: 17th August, 2017

\+ MAC.APP. 235/2015 and CM Nos.4065/2015 & 11070/2016

IFFCO TOKIO GENERAL INSURANCE CO LTD...Appellant
Through: Mr. Praveen Sehrawat and Mr. Abhishek Kumar, Advocates

versus

ASHA ARORA AND ORS ..... Respondents
Through: Mr. Navneet Goyal, Adv. for R-1 to 3

\+ MAC.APP. 548/2015 and CM 12311/2015

ASHA ARORA & ORS ..... Appellants
Through: Mr. Navneet Goyal, Advocate

versus

MANOJ KUJMAR & ORS ..... Respondents
Through: Mr. Praveen Sehrawat and Mr. Abhishek Kumar, Advocates for R-3

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

JUDGMENT (ORAL)

1. Vinay Kumar Arora, died in a motor vehicular accident that occurred on 10.11.2008 due to the negligent driving of a maruti van bearing registration no.DL-1K-3933, which was admittedly insured against third party risk for the period in question with Iffco Tokio General Insurance Co. Ltd. (insurer), the appellant in MACA

235/2015. His wife and two children, they being appellants in MACA 548/2015 (collectively, the claimants), instituted accident claim case (MACT case no.538/13/09) on 12.05.2009 seeking compensation impleading the driver, owner and insurer of the offending vehicle as party respondents.

2. The Motor Accident Claims Tribunal (Tribunal), after inquiry, by judgment dated 28.11.2014, while upholding the case for compensation on the principle of no fault liability, awarded Rs.21,00,960/- as compensation in favour of the claimants directing the insurer to pay with interest at the rate of 9% p.a. though accepting its plea of breach of the terms and conditions of the insurance policy, and consequently granting it the right to recover from the insured.

3. The claimants by their appeal seek enhancement. They press their appeal only on the ground that the accident had occurred on 10.11.2008 and that the victim remained under treatment in Brahm Shakti Hospital till he died on 14.11.2008 and that, in the process, expenditure was incurred in the total sum of Rs.3,03,010/- which has not been included in the award by the tribunal.

4. It is noted that the claimants, through the evidence of Chetan Arora (PW-1) on the strength of his affidavit (Ex. PW1/A), had proved the said medical expenditure as per details summarized in document (Ex. PW1/2). It seems that this part of the evidence escaped the notice of the tribunal. Such evidence which was not impeached should have resulted in inclusion of the said amount towards the expenditure incurred on account of medical treatment for the injuries suffered by the deceased. It now being added to the compensation

awarded by the tribunal, the total compensation comes to (Rs.21,00,960/- + Rs.3,03,010/-) Rs.24,03,970/-, rounded off to Rs.24,04,000/-. The compensation is enhanced accordingly. Needless to say, it shall carry interest as levied by the tribunal.

5. The sole argument pressed at the hearing on the appeal of the insurance company is that given the breach noted, the insurance company should have been totally exonerated rather than being asked to pay the compensation and then to recover from the insured. This grievance cannot be accepted. The third party interest has to take priority. The breaches on which account the right to recover has been granted relate to the commercial use of the vehicle by the insured even though the insurance policy was taken for the vehicle meant for private use. Given the fact that the insurance company has been granted the right to recover, its legitimate interests have been duly protected. There is no reason for any interference on that score.

6. By order dated 05.03.2015 in MACA 235/2015, the insurance company had been directed to deposit the entire awarded amount with proportionate interest with the Registrar General which was directed to be kept in fixed deposit for a period of one year. The amount, thus deposited will now be released to the claimants in terms of the impugned judgment.

7. Since the compensation has been increased, the insurance company will be obliged to deposit the balance with corresponding interest with the tribunal, which it must do within 30 days, such deposit of enhanced portion of the award with corresponding interest to be paid to the first claimant Asha Arora (widow) only.

8. The statutory deposit made by the insurance company shall be refunded.

9. Both the appeals and the pending applications are disposed of in above terms.

R.K.GAUBA, J.

AUGUST 17, 2017
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