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

Decided on: 12th September, 2017

+ MAC.APP. 494/2014

THE NEW INDIA ASSURANCE CO LTD Appellant
Through: Mr. Pankaj Seth, Advocate

versus

SATWANTI & ORS Respondents
Through: Mr. S.N. Parashar, Advocate

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

JUDGMENT (ORAL)

1. Inderjeet Singh, then aged 47 years, employed as peon with DAV Publication Division, as appointee of DAV College Management Committee, on the last salary of Rs.13,989/- per month, was riding on the pillion of motorcycle bearing registration No.DL-8S-AC-8232 (the motorcycle) driven by one Naresh Kumar on 04.06.2009. As the motorcycle reached R.P. Chowk, traffic light near T.V. Tower, Pitampura, Delhi, it was involved in a collision with bus bearing registration No.DL-1PB-1815 (the bus), which was admittedly insured against third party risk with the appellant insurance company for the period in question. Both Inderjeet Singh and Naresh Kumar suffered injuries, the former dying in the consequence on 06.06.2009 in Siddhartha Nursing Home at Bawana Delhi. His wife and two sons,

they being first to third respondents (collectively, the claimants), instituted accident claim case (MACT No.455/2009) seeking compensation. The Tribunal held inquiry and, by judgment dated 05.04.2014, accepted the claim on the principle of fault liability holding the fourth respondent herein as the driver of the bus on account of whose negligence the accident had occurred, he being found to be the principal tort-feasor, also holding the fifth respondent, (the registered owner of the bus) to be the person vicariously liable. The Tribunal determined compensation in the total sum of Rs.21,26,344/- and called upon the insurer to pay with interest.

2. The insurer by the appeal at hand has sought to assail the judgment of the tribunal challenging the finding returned about the death having occurred due to negligence driving of the bus, question also being raised about the computation of compensation primarily on the ground that the sons could not have been included amongst the claimants, and, therefore, the deduction on account of personal and living expenses should have been to the extent of fifty per cent rather than one-third. It is also the submission of the insurance company that the allowances reflected in the salary certificate (Ex.PW-1/3) should have been kept out and the income tax liability should also have been taken into consideration.

3. Having heard the learned counsel for the appellant, this court finds all the contentions urged in the appeal to be wholly devoid of substance or merit.

4. The evidence led before the tribunal included reliance on the testimony of Naresh Kumar, the motorcycle rider who had also suffered injuries and had also filed accident claim case (Petition No.454/2009), which was also subjected to inquiry that was parallel to the inquiry in the case in hand. The evidence of the said witness Naresh Kumar brought out the relevant facts about the sequence of events leading to the collision, the responsibility clearly brought out to be that of the bus driver. Noticeably, no evidence to the contrary was adduced not even at the instance of the insurer, the bus driver not even having offered his own version as to the sequence of events. It may be true that there was no post-mortem examination on the dead body of Inderjeet Singh. But it cannot be ignored that the medical record confirms that he was taken to the hospital immediately after the occurrence and was shifted to Babu Jagjivan Ram Hospital and from there he was taken to the Nursing Home where death occurred two days after the occurrence. In the sequence of events, the connection between the injuries suffered in the accident and the death has been properly established.

5. The learned counsel for the claimants pointed out that as per the ration card (copy at page 137 of the tribunal's record) the third claimant was born in 1992. This would show that he was 17 years old on the date the death of his father occurred. In these circumstances, it is not correct on the part of the insurer to argue that both the sons had to be kept out from the category of those dependents on the deceased. Thus, the deduction on account of personal and living expenses to the extent of one-third, as factored in by the tribunal, is correct.

6. The allowances in the nature of dearness allowance, house rent allowance, travelling allowance and other allowances, as indicated in the salary certificate Ex.PW-1/3 were part of the regular terms of engagement of the deceased by his employer. Going by the evidence adduced it was a regular employment in which there was periodic rise in income. The allowances being regular part of the income, they would result in corresponding savings and thus have a bearing on the loss of dependency. Since the total emoluments were only Rs.13,989/- the annual income was hardly Rs.1,67,868/-. Going by the rates of income tax prevalent during the relevant period, no deduction on account of such liability was called for.

7. The appeal is dismissed with costs of Rs.25,000/-. The statutory amount deposited by the appellant insurance company shall stand forfeited as costs to be remitted to the Delhi High Court Legal Services Committee.

8. The insurer had been directed by order dated 26.05.2014 to deposit the entire awarded amount with interest with the Registrar General of this Court and out of such deposit seventy per cent (70%) was allowed to be released. The balance kept in fixed deposit shall also now be released to the claimant in terms of the impugned judgment.

9. The appeal stands disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 12, 2017

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