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

Decided on: 19th July, 2017

+ **MAC.APP. 277/2016 and CM APPL.39043/2016**

IFFCO TOKIO GENERAL INSURANCE CO LTD

..... Appellant

Through: Ms. Suman Bagga, Advocate
with Mr. Pankaj Gupta, Adv

versus

ASHU MUNJAL & ORS

..... Respondents

Through: Mr. Pratap Singh Yadav, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Yogesh Munjal, aged 42 years, working as Manager with M/s. Orange Apparels, died as a result of the injuries suffered in a motor vehicular accident that occurred on 21.11.2014 involving rash driving of motor vehicle described as Maruti Car bearing registration No.HR-26-CG-5598 which was admittedly insured against third party risk for the period in question with the appellant insurance company (the insurer), on the accident claim case (Suit No.129/15), taken out in the wake of the Detailed Accident Report (DAR) submitted by the local police pursuant to the investigation into First Information Report (FIR) No.616/2014 of Police Station Fatehpur Beri, on behalf of his

wife and two minor sons, they being first to third respondents in this appeal (collectively, the claimants).

2. The Motor Accident Claims Tribunal (the tribunal), after accepting the case of the negligent driving of the above mentioned vehicle to be the cause, awarded compensation computed at Rs.73,11,200/- in favour of claimants and directed the insurance company to pay with interest @ 9% per annum. The said award includes Rs.1 lac each towards loss of love and affection and loss of consortium, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss to estate, balance Rs.70,76,200/- being on account of loss of dependency.

3. The insurer questions the computation of loss of dependency on the ground the assumption in para 16 of the award that the income of the deceased was Rs.54,000/- was incorrect. It is pointed out that the income was derived on the basis of income tax return (ITR) for the assessment year (AY) 2012-13, it being in the sum of Rs.3,27,850/-, wrongly assumed by the tribunal to be on account of income from business. It is submitted that the said ITR would show that the income from business was only Rs.75,850/- while salary was Rs.2,52,000/- which, put together, come to Rs.3,27,850/- and, as per the submissions, the said return would indicate the income was Rs.27,320.83 per month. As against this, the tribunal calculated taking the income at Rs.54,000/- which was not supported by any evidence, such assumption being not on the basis of future prospects since that element to the extent of 30% was added later.

4. *Per contra*, the claimants argued through the counsel that while the non-pecuniary damages awarded by the tribunal are inadequate, the last salary drawn by the deceased is not truly reflected in the ITR for AY 2012-13, in as much as, per the evidence of employer (PW-2), the deceased was earning Rs.33,600/- per month w.e.f. 01.04.2014 (Ex.PW-2/A) which was to get reflected in the ITR in the subsequent period, death having occurred before such ITR for subsequent period could be submitted.

5. It does appear that the figure of Rs.54,000/- indicated in para 16 is without any basis. At the same time, however, it also does appear that the last salary at Rs.33,600/- could not have been ignored. Taking this into account, the last earnings would have to be computed by adding the business income with the last salary drawn. The submission of the insurer that the business income cannot be factored in is not correct because the previous ITR do show such income to be recurrent.

6. The business income in the last ITR filed during the lifetime of the deceased was Rs.75,850/- which comes to Rs.6320/- per month. It is not correct on the part of the insurer to argue that the conveyance allowance, as reflected in the last salary slip, should be kept out. The said allowance would inure to the benefit of the deceased and his dependent family members as it would lead to corresponding savings. Thus, the total last monthly earnings comes to (6320/- + 33,600/-) Rs.39,920/- per month.

7. Having regard to the age of the deceased at the time of occurrence, the future prospects to the extent of 30% are added. Thus, the notional income comes to $(39,920/- \times 130/100)$ Rs.51,896/-. The annual notional income would be $(51,896/- \times 12)$ Rs.6,22,752/-.

8. The death had occurred on 21.11.2014. The income tax liability on the above calculated income for the corresponding period would approximately be around Rs.22,000/-. The net annual income on which loss of dependency can be worked out, thus, comes to $(6,22,572/- - 22,000/-)$ Rs.6,00,572/-.

9. It is noted that when the accident claim was brought before the Tribunal, the mother of the deceased was alive. She having later died her name stood struck off. The fact remains that on the date the cause of action arose there were four claimants. In this view, the deduction on account of personal and living expenses would be to the extent one-fourth. Thus, applying the multiplier of 14, the loss of dependency is calculated as $(6,00,752/- \times 3/4 \times 14)$ Rs.63,07,896/- rounded off to Rs.63,08,000/-.

10. The submission of the claimants about inadequacy of non-pecuniary damages is correct. Following the view taken in MAC.APP.No.160/2015 MAC.APP.160/2015 *Shriram General Insurance Co Ltd v. Usha* decided by this court on 05.05.2016, non-pecuniary damages in the sum of Rs.1,50,000/- each towards loss of love & affection and towards loss of consortium and Rs.50,000/- each towards loss of estate and funeral expense are added. Hence, the total

compensation payable in the case comes to (63,08,000/- + 4,00,000/-) Rs.67,08,000/-.

11. The award is modified accordingly. Needless to add, it shall carry interest as levied by the tribunal.

12. By order dated 27.04.2017 the entire awarded amount was deposited with the Tribunal, out of which 60% was ordered to be released to the claimants.

13. The tribunal shall re-calculate as per modified award, releasing the balance in favour of the claimants and refunding the excess to the appellant insurance company.

14. The appeal is allowed in above terms.

15. Pending applications also stand disposed of.

16. The statutory amount, if deposited, shall be refunded to the appellant.

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R.K.GAUBA, J.

JULY 19, 2017

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