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

Decided on: 21st September, 2017

\+ MAC.APP. 243/2016 and CM 9864/2016

FUTURE GENERALI INDIA INSURANCE CO LTD .... Appellant

Through: Mr. Pankaj Gupta for Ms. Suman Bagga, Advocate

versus

ANU MISHRA & ORS .... Respondents

Through: Mr. S.N. Parashar, Advocate for R-1 to 5

Mr. Priyadarsi Acharya, Advocate for R-10

\+ MAC.APP. 314/2016 and CM Nos.13739/2016 & 13741/2016

NEW INDIA ASSURANCE CO LTD ..... Appellant

Through: Mr. Priyadarsi Acharya, Advocate

versus

ANU MISHRA & ORS ..... Respondents

Through: Mr. S.N. Parashar, Advocate for R-1 to 5

Mr. Pankaj Gupta for Ms. Suman Bagga, Advocate for R-3/insurance

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

JUDGMENT (ORAL)

1. On 27.07.2013, Satish Kumar Mishra and Manoj Kumar were moving on a motorcycle and had reached Chhawala village near

Gurgaon Najafgarh Road, when their vehicle came to be hit by a car bearing registration no.HR-26-BB-8100 (the car), it being driven at the relevant point of time by the sixth respondent. Both having fallen down due to the said collision, around the same time, a bus bearing registration no.HR-55-P-6234 (the bus) came on the spot, it being driven by the eight respondent. The bus driver could not control his vehicle and ended up running over both the riders of the motorcycle crushing Satish Kumar Mishra to death, Manoj Kumar suffering grievous injuries.

2. Two accident claim cases came to be instituted before the Motor Accident Claims Tribunal (Tribunal), one (MACP 205/2013) by the first to fifth respondents (collectively, the claimants), being members of the family dependent on the deceased Satish Kumar Mishra and, the other, (MACP No.204/13) by the injured Manoj Kumar. In each case, besides the car driver and the bus driver, the respective owners and insurers of the said two vehicles were also impleaded as party respondents. The appellant / Future Generali India Insurance Company Ltd. in MACA 243/2016 is the insurer of the car while the appellant / New India Assurance Co. Ltd. in MACA 314/2016 is the insurer of the bus. They shall hereinafter be referred to as "the insurer of the car" and "the insurer of the bus" respectively.

3. The Tribunal held inquiry in the course of which evidence was led which included the testimony of Manoj Kumar (PW-1), the surviving motor rider, the first respondent (widow) also appearing in the evidence (as PW2) and examining Raju Gupta (PW-3), HR Executive from Sterling Motor Company where the deceased was

working as Spare Parts Manager since 28.05.2011. On the other hand, the insurer of the bus examined SI Dilbagh Singh (RW6/1) primarily in an attempt to prove that there was no negligence on the part of the bus driver.

4. By judgment dated 19.12.2015, the two claim cases were decided by the tribunal, it upholding the case for compensation of both sets of the claimants on the ground that the car driver as well as the bus driver had been negligent, apportioning the liability in the ratio of 50:50 amongst them. In the case of death, the tribunal awarded compensation in the sum of Rs.94,89,000/-, this inclusive of Rs.89,64,000/ towards loss of dependency, Rs.1,00,000/- towards loss to estate, Rs.25,000/- towards funeral expenses, Rs.1,00,000/- towards loss of consortium and Rs.3,00,000/- towards loss of love and affection.

5. The liability having been apportioned amongst the drivers of both the vehicles, their respective insurers were called upon to pay the compensation determined, the element of interest at the rate of 10% p.a. having been added thereto.

6. The insurer of the bus, by its appeal, questions the conclusion of the tribunal holding the bus driver responsible for the accident. The insurer of both the vehicles by their respective appeals also challenge the computation of compensation. It is their submissions that the evidence of PW-3 could not have been construed as sufficient to infer that the terms of engagement of the deceased in the private employment had the element of prospects of progressive rise in income which has been added in the calculation to the extent of 50%.

The tribunal has applied the multiplier of 16. The submissions of the insurance companies is that the age of the deceased was 36 years and 8 months and, therefore, the multiplier of 15 should have been invoked. The insurance companies further point out that the tribunal made an error by not deducting the income tax liability while calculating the loss of dependency. The grievance about the rate of interest (10% p.a.) is also pressed with the submission that it is unduly excessive.

7. Having heard the learned counsel on all sides and having gone through the tribunal's record, this court finds no merit in the contention of the insurer of the bus about there being no evidence showing negligence on the part of the bus driver. The car driver was clearly negligent as it had hit the motorcycle at an uncontrollable speed. It may be that, for the bus driver, there had been some element of surprise as the two motorcycle riders had fallen down on the road coming in the path of the bus, but then, given the fact that the bus driver was well aware that other vehicles were also using the road at the same time shows that he should have been wary and been in a position to check his speed and movement. The fact that he ran over the deceased who had fallen on the road and also hit the other motorcycle rider, shows that his vehicle was also moving in a rash manner. For these reasons, this court declines to interfere with the finding of negligence on the part of both the drivers.

8. The learned counsel for the claimants pointed out from the evidence of PW-2 that he had proved not only the salary slip of the deceased but also the complete record of the wages paid to all the

employees including the deceased. The omission on the part of the witness to prove the appointment letter in the given facts and circumstances is inconsequential. Having regard to the wages paid on regular basis to the deceased ever since his appointment made effective from 28.05.2011, the element of future prospects is found to have been correctly added to the calculation.

9. The learned counsel for the claimants fairly conceded that the tribunal has fallen in error by not applying the multiplier of 15 and also by not deducting the income tax liability. On the income of Rs.4,15,000/- during the financial year 2013-2014, the income tax liability would come to about Rs.30,000/-. Thus, the loss of dependency, after deducting the income tax liability and making deduction of one-fourth, on the multiplier of 15, would come to [Rs.4,98,000/- (-) Rs.30,000/- x 150/100 x 3 /4 x 15] Rs.78,97,500/-, rounded off to Rs.78,98,000/- (Rupees Seventy eight lakhs and ninety eight thousand only).

10. The grievance of the insurance company about non-pecuniary damages is also correct. Following the dispensation in *Shriram General Insurance Co Ltd v. Usha, MAC.APP.No.160/2015*, decided on 05.05.2016, awards under the heads of loss of love and affection and loss of consortium are granted in the same of Rs.1,50,000/- each and under the heads of loss to estate and funeral expenses are added in the sum of Rs.50,000/- each.

11. Thus, total compensation in the death case comes to [Rs.78,98,000/- + Rs.1,50,000/- + Rs.1,50,000/- + Rs.50,000/- +

Rs.50,000/-] Rs.82,98,000/- (Rupees Eighty two lakhs and ninety eight thousand only). The award is reduced accordingly.

12. Following the consistent view taken by this Court, the rate of interest is reduced to 9% (nine percent) per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.]

13. By order dated 18.03.2016 in MACA 243/2016, the insurer of the car had been directed to deposit the entire awarded amount with interest at the rate of 9% p.a. and from out of such deposit, 30% (thirty percent) was allowed to be released to the claimants in terms of the impugned award. By similar order dated 19.04.2016 on MACA 314/2016, the insurer of the bus had been directed to deposit the entire awarded amount with interest and from out of such deposit, 40% (forty percent) was allowed to be released to the claimant in terms of the impugned judgment. It is noted that the tribunal had specified the amounts falling to the shares of the respective claimants. Given the fact that the total award of compensation has been reduced, it is directed that the amounts already received in terms of the interim orders in both these appeals by the claimants other than the widow (Anu Mishra) shall be treated as their share in the compensation. The entire balance now payable by the two insurance companies in terms of the modification ordered above to go to the share of the first claimant Anu Mishra (widow).

14. The statutory deposits of both the insurance companies shall be refunded.

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

R.K.GAUBA, J.

SEPTEMBER 21, 2017
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