

\$~R-379 & 380

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

Decided on: 27th October, 2017

+ MAC APPEAL 751/2011 & CM 15704/2011

RELIANCE GENERAL INSURANCE CO. LTD. ... Appellant

Through: Mr. Arun Yadav, Advocate

versus

DEVESHWARI DEVI & ORS. Respondents

Through: Mr. Navneet Goyal, Adv. for R-1 & 2

+ MAC APPEAL 71/2012

DEVESHWARI DEVI & ANR. Appellants

Through: Mr. Navneet Goyal, Advocate

versus

AKRAM & ORS. Respondents

Through: Mr. Arun Yadav, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Vishwambar Pd. Joshi, a bachelor, aged 24 years, employed with Maruti Suzuki India Ltd. as Assistant Supervisor, suffered injuries in a motor vehicular accident that occurred on 30.05.2008 due to negligent driving of bus bearing registration no.DL-1PB-9169 and died in the consequence. His parents, appellants in MACA 71/12

(collectively, the claimants) instituted accident claim case (MACT 1236/08) on 30.07.2008 seeking compensation impleading the owner, driver and insurer respectively of the bus as party respondents. The insurer is now the appellant in MACA 751/2011.

2. The Motor Accident Claims Tribunal (Tribunal) after inquiry, by judgment dated 06.07.2011, accepted the case that the death had occurred due to the negligent driving of the bus. It awarded compensation in the total sum of Rs.16,87,500/-, it inclusive of Rs.10,000/- each towards loss of love and affection, loss to estate and funeral charges, the balance being the component under the head of loss of dependency. The liability to pay was fastened on the insurer, there being no adjudication on its plea that there was breach of the terms and conditions of the insurance policy for the reason the driver of the bus Shripal Yadav (respondent in these appeals) was not holding a valid or effective driving licence.

3. The claimants have come up in appeal seeking enhancement of compensation on the ground that the loss of dependency was worked out without adding the element of future prospects of increase and against the multiplier of 13 ignoring the fact that the prime claim was for and on behalf of the Deveshwari Devi (mother), who was 43 years old on the relevant date for which reason multiplier of 14 should have been adopted. The claimants also submitted that the non-pecuniary damages awarded are deficient.

4. On the other hand, the insurance by its appeal submits that its plea of breach of the terms and conditions of the insurance policy

should have been accepted and it should have been granted recovery rights.

5. The submissions of the claimants are found to be correct. Having regard to the terms and conditions of the engagement of the deceased with Maruti Suzuki India Ltd., which were proved by Vijay Vir Singh (PW-2), Assistant Manager (HR), it is clear that the same would ensure progressive rise in income. In these circumstances, the element of future prospects of increase to the extent of 50% is added. Having regard to the age of the mother, the multiplier of 14 would apply.

6. Thus, the loss of dependency is recomputed as [Rs.2,55,000/- x $150/100 / 2 \times 14$] Rs.26,77,500/- (Rupees Twenty six lakh seventy seven thousand and five hundred).

7. Following the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, the non-pecuniary damages are increased to Rs.1,00,000/- on account of loss of love and affection and Rs.25,000/- each towards loss to estate and funeral expenses.

8. Thus, the total compensation is computed as [Rs.26,77,500/- + Rs.1,00,000/- + Rs.25,000/- + Rs.25,000/-] Rs.28,27,500/-, rounded off to Rs.28,28,000/- (Rupees Twenty eight lakh and twenty eight thousand).

9. The Tribunal had apportioned the award granted by it equally amongst the parents. It is directed that the entire enhanced portion of the award with corresponding interest shall fall to the share of the mother Deveshwari Devi, it to be released to her in the form of fixed

deposit receipt taken out from Nationalized bank in her name for a period of five years with provision for auto renewal and right to draw periodic interest. The insurer is directed to satisfy the enhanced award by requisite deposit with the tribunal within 30 days.

10. It is noted that the owner and driver of the offending vehicle, they being third and fourth respondents in MACA 751/2011 had chosen to suffer the proceedings before the tribunal *ex parte*. They were served in the appeal but would not appear.

11. During the inquiry before the tribunal, the insurance company had examined Satyan Kapur (R3W1), Deputy Manager, who deposed on the strength of his affidavit (Ex.R3W1/A). By the said evidence, he had testified that the copy of the driving licence which had been made available, upon verification, had been found to be fake. He proved report to this effect (vide Ex. R3W1/B). There is no contest to the said evidence from the side of the owner or the driver. Since they have failed to respond by proving any facts to the contrary, it has to be assumed that the driver of the vehicle was not holding a valid or effective driving licence at the time of the accident. This constitute breach of the terms and conditions of the insurance policy.

12. In the consequence, the appeal of the insurance company on above plea is allowed. It is granted recovery rights against the third and fourth respondents in MACA 751/2011.

13. By order dated 24.08.2011 in MACA 751/2011, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General as a pre-condition to the stay against execution. By subsequent order dated 24.02.2012, fifty

percent (50%) was permitted to be released to the claimants. The balance lying in fixed deposit with accrued interest shall also be released to the claimants, as per the modification ordered above.

14. The statutory amount deposited by the insurance company shall be refunded, on proof of the award as enhanced being satisfied.

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

OCTOBER 27, 2017

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R.K.GAUBA, J.