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

Decided on: 12th October, 2017

\+ MAC.APP. 491/2010

NEW INDIA ASSURANCE CO LTD ..... Appellant

Through: Mr. Sameer Nandwani, Adv.

versus

SHAMBHU & ORS ..... Respondents

Through: Mr. S.N.Parashar, Adv. for R-1 to R-3

Mr. Kameshwar Singh, Adv. with Mr. Ravindra Kumar Singh, Adv. for R-4

\+ MAC.APP. 25/2011

KESHAV SINGH ..... Appellant

Through: Mr. Kameshwar Singh, Adv. with Mr. Ravindra Kumar Singh, Adv.

versus

SHAMBHU & ORS ..... Respondents

Through: Mr. Sameer Nandwani, Adv. for R-2

Mr.S.N.Parashar, Adv. for R-1 & R-3

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

JUDGMENT (ORAL)

1. Rajinder Singh @ Rajan, then 34 years old, a bachelor, living with his brother (the first respondent in these appeals) died in a motor vehicular accident that had occurred on 12.02.2006 due to the negligent driving of Truck bearing No. UP-78-AT-2586 which was admittedly insured against third party risk with New India Assurance Company Ltd. (appellant in MAC APP. 491/2010). The truck was registered in the name of Keshav Singh (Appellant in the MAC APP. 25/2011). The accident claim case was instituted on 20.03.2006 by the first respondent in which two appellants herein were impleaded as party respondents. Later the claimant also impleaded his two married sisters they being Ms. Lilam and Ms. Manor Devi who are respondents in these appeals in addition to Mr. Anil Kumar, the driver of the truck at the relevant point of time.

2. On the basis of the inquiry held, the tribunal, by judgment dated 26.05.2010, upheld the claim that the death had occurred due to the negligent driving of the truck. It awarded compensation in the sum of Rs. 6,58,032/-, the said amount inclusive of loss of dependency in the sum of Rs. 6,28,032/- besides Rs. 10,000/- each towards loss of love and affection, loss of estate and funeral expenses. The insurer was directed to pay the said amount with interest 7.5% p.a. However, its

plea about breach of terms and condition of the insurance policy having been accepted on the basis of the evidence led, primarily on the ground that there was no permit shown to be existing on the date in question, it was granted recovery rights against the owner of the offending vehicle who is the appellant in MAC APP. 25/2011.

3. The insurer, by its appeal (MAC APP. 491/2010), has questioned the award on the ground that since the deceased was a bachelor, the claim being for and on behalf of the siblings, no dependency loss was required to be compensated, the only permissible award being towards loss to estate. The registered owner of the offending vehicle, on the other hand, has also raised similar issues about the dependency loss having being improperly granted.

4. Having heard the learned counsel from on all sides, this court finds substance in the exception taken to the award inclusive of one under the head of loss of dependency. Against the above backdrop of facts loss of estate primarily should have been included though with non-pecuniary damages under the head of loss of love and affection and funeral expenses added.

5. The tribunal concluded the notional income of the deceased at Rs. 4906/-. The loss to estate in the present case will have to be assessed taking it to be a bachelor's death, thus, to the extent of 50%. Against the age of 34 years the multiplier of 16 is applied. The loss of estate is recomputed as (4906/2 x12 x16) Rs. 4,70,976/- rounded off to Rs. 4,71,000 (Rupees four lakhs seventy one thousand only).

6. It is noted that the non pecuniary damages awarded under the heads of loss of love and affection and funeral expenses are deficient. Following the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, the award of Rs. 1,00,000/- is granted towards loss of love and affection and Rs. 25,000/- on the account of funeral expenses. Thus, the total compensation payable in the case is computed as (Rs. 4,71,000/- + Rs. 1,00,000/- + Rs. 25,000/-) Rs. 5,96,000/- (Rupees Five Lakh Ninety Six Thousand only).

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

8. The award is modified accordingly.

9. By the order dated 27.08.2010 in MAC appeal No.491/2010, the insurance company had been directed to deposit the entire awarded amount and out of such deposit 30% was allowed to be released to the claimants, the balance retained. The registry shall calculate the amount now payable to the claimants in terms of the modified award and release the remainder from out of the balance held back refunding the excess, if any, to the insurance company. In case there is any deficiency in the deposit, the insurance company will be obliged to pay the balance with requisite deposit with the tribunal within 30 days.

10. Needless to add, the recovery right already granted to the insurance company shall remain undisturbed. The registered owner of the vehicle (appellant in MAC APP. 25/2011) shall pay the same forthwith to the insurance company and in case of deficiency insurance company will have the right to recover the same by appropriate proceedings before the Tribunal.

11. The statutory amount deposited by the insurance company in its appeal shall be applied first in case of deficiency if any in the deposited award and the excess refunded. The statutory amount deposited by the registered owner in his appeal, however, shall be made over to the insurance company towards part satisfaction of its recovery rights.

12. Both appeals are disposed of in the above terms.

R.K.GAUBA, J.

OCTOBER 12, 2017
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