$~17 & 18

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

Decided on: 25th October, 2017

\+ MAC APPEAL No. 404/2016

RELIANCE GENERAL INSURANCE CO. LTD ..... Appellant
Through: Mr. A.K. Soni, Adv.

versus

ARCHANA SAXENA & ORS. ..... Respondents
Through: Mr. Rajeshwar P. Gupta, Adv. for R-1 & 2.

\+ MAC APPEAL No. 781/2016

ARCHANA SAXENA & ANR. ..... Appellants
Through: Mr. Rajeshwar P. Gupta, Adv.

Versus

RELIANCE GENERAL INSURANCE CO. LTD…. Respondents
Through: Mr. A.K. Soni, Adv. for R-1.

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

JUDGMENT (ORAL)

1. Anupam Saxena, a bachelor, was riding on motorcycle carrying along Arun Sain on the pillion on 06.10.2010 and had reached new flyover on way to Ghaziabad at about 5.00 a.m., when his motorcycle came to strike against a motor vehicle described as Tata 407 bearing

registration no. DL 1LE 1008 (the Tata 407) which was stationary on the flyover, it admittedly having broken down, it being under the control of its driver Basarat Ali and being registered in the name of Puran Chand, both respondents in these appeals. The said vehicle (Tata 407) was admittedly insured against third party risk with Reliance General Insurance Company Ltd. (appellant in MAC Appeal No. 404/2016) for the period in question. As a result of the collision, both Anupam Saxena and Arun Sain fell down, and at the same time another vehicle Canter came on the scene and also hit against the Tata 407. Anupam Saxena died as a result of injuries suffered.

2. Three accident claim cases came to be filed before the tribunal, one of which (suit no. 236/2016) was instituted by Archana Saxena and Anjali Saxena, mother and sister of the deceased Anupam Saxena (they being appellants in MAC Appeal No. 781/2016). The tribunal held inquiry after clubbing the three cases and decided them by common judgment dated 22.02.2016. It held that the accident had occurred due to negligence on the part of the driver of Tata 407 and awarded compensation in each case. In the claim on account of death of Anupam Saxena, compensation in the total sum of Rs. 7,66,632/- was awarded, which included non-pecuniary damages in the sum of Rs. 1,00,000/- each towards loss to estate and loss of love & affection and Rs. 25,000/- towards funeral expenses. The liability to pay the compensation was fastened against the insurer of the Tata 407 (appellant in MAC Appeal No. 404/2016), it being called upon to discharge the said liability with interest levied @ 12% per annum.

3. By its appeal (MAC Appeal no. 404/2016), the insurer of Tata 407 argues that the evidence would show that it was the deceased who himself was negligent in that the driver Basarat Ali had proved by his own testimony (appearing as R1W1) that he had parked the vehicle on the left side of the road and, thus, had taken due precautions while checking out the fault opening the bonnet of the vehicle. The insurance company also questions the inclusion of Rs. 1,00,000/- towards loss to estate submitting that the same and also the rate of interest levied are excessive.

4. By cross-appeal (MAC Appeal No. 781/2016), the claimants in the case on account of death of Anupam Saxena submit that since the minor sister of the deceased is dependent, the deduction on account of personal expenses should have been to the extent of 1/3rd, rather than 50%. Thus, the request is for the award towards loss of dependency to be calculated accordingly.

5. The plea of the insurer of Tata 407 about negligence on the part of deceased motorcyclist cannot be accepted. The tribunal has considered this plea and rejected it for sound reasons applying the principle of *res ipsa loquitor*. The site plan at page 29 of the tribunal's record clearly shows that the contention of R1W1 that the vehicle was parked on the left side of the road is incorrect. This site plan was prepared by the local police in the course of investigation into the FIR and shows that the road on the flyover is divided by a central verge, each carriageway having four lanes. The site plan would show that Tata 407 was parked in between the extreme left and the lane next to it rather than on the edge of the last lane. The

evidence of Arun Sain who appeared as a witness during the inquiry clearly brought out that there were no caution signs applied by the driver of Tata 407 while he was checking the fault in the engine. Keeping in view the time of the day when the accident occurred, the finding returned by the tribunal on the issue of negligence does not call for any interference.

6. The submission of the claimants about the personal and living expenses cannot be accepted in view of the ruling in *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121*, it being a case of bachelor's death. The insurance company may be correct in submitting that the loss of estate at Rs. 1,00,000/- is higher than what is ordinarily awarded in cases of same vintage (see ruling in *Shriram General Insurance Co Ltd v. Usha, MAC.APP.No.160/2015*, decided on 05.05.2016). However, at the same time the amount of Rs. 1,00,000/- under the head of loss of love & affection and Rs. 25,000/- towards funeral expenses is lower than the dispensation in such cases. Therefore, rather being decreased, the award under the heads of non-pecuniary damages requires to be increased by Rs. 25,000/-. Ordered accordingly.

7. The compensation on account of death of Anupam Saxena, thus, is increased to (7,66,632 + 25,000) Rs. 7,91,632/-, rounded off to Rs. 7,92,000/- (Rupees Seven Lakhs Ninety Two Thousand Only.)

8. There is no special reason set out in the impugned judgment to levy interest @ 12% which is higher than the ordinary. 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*.]

9. The award is modified accordingly. It is directed that entire enhanced portion of the award shall fall to the share of first claimant Archana Saxena (mother)

10. By order dated 12.05.2016 on MAC Appeal No. 404/2016, the insurance company had been directed to deposit the entire awarded amount with upto date interest @ 9% per annum and from out of such deposit 50% was permitted to be released to the claimants. The tribunal will now calculate the amount payable to the claimants in terms of the modification ordered above and release the balance to the claimants from out of the remainder, refunding the excess, if any, to the insurance company. In case of shortfall, the insurance company shall deposit the deficient amount within 30 days.

11. The statutory amount shall be refunded.

12. Both appeals stand disposed of.

R.K.GAUBA, J.

OCTOBER 25, 2017
nk