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

Decided on: 11th September, 2017

\+ MAC.APP. 281/2015 and CM APPL. 5340/2015 (stay),
CM APPL. 24117/2016 (cross objections)

NATIONAL INSURANCE CO LTD ..... Appellant
Through: Mr. Pankaj Seth, Advocate

versus

KUSUM & ORS ..... Respondents
Through: Mr. S.N. Parashar, Advocate

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

JUDGMENT (ORAL)

1. Jitender Singh, 44 years old, employed with Delhi Police, suffered injuries in a motor vehicular accident that occurred on 27.09.2013 due to negligent driving of car bearing registration No.DL-3CAZ-0837, admittedly insured against third party risk with the appellant insurance company (insurer) and died in the consequence. The first to fifth respondents (collectively the claimants), being his wife and other members of the family dependant on him, instituted accident claim case (MAC Petition No.10/2014) on 09.01.2014 seeking compensation. The tribunal held inquiry and, by judgment dated 03.01.2015, accepted the case for compensation on the principle of fault liability, holding the appellant liable to pay the compensation which was determined in the sum of Rs.64,12,472/-. It, however,

appears that the award was modified on application under Section 152 of the Code of Civil Procedure, 1908 (CPC) being moved pointing out arithmetical error, by subsequent order dated 15.01.2015, it being reduced to Rs.52,33,112/-, the said amount having been calculated thus:-

Sl.No.	Head	Amount in (Rs.)
1.	Loss of dependency	49,98,112/-
2.	Loss of love and affection	1,00,000/-
3.	Funeral expenses	25,000/-
4.	Loss of consortium	1,00,000/-
5.	Loss of estate	10,000/-
	Total	52,33,112/-

2. The insurer on which liability to pay compensation has been fastened presses the appeal on the grounds that the issue of negligence was not properly considered as the FIR was belated and the presence of Harender Singh (PW-3) at the scene of accident is doubtful. It also raises the issue that the widow (first respondent) while appearing in the evidence (PW-1) had admitted that Delhi Police department had also paid Rs.10 lacs to the next of kin. It is the submission of the insurer that the said amount should be deducted.

3. Having heard the learned counsel on both sides and having perused the record, this court is of the opinion that both the contentions of the insurer must be rejected.

4. The fact that at the time of registration of the FIR, police was unable to locate an eye witness does not mean that there would be no eye witness or an eye witness brought later cannot be believed. The evidence of PW-3 is found to be inspiring confidence, there being nothing in the cross-examination from which his credibility could be doubted. Noticeably, the driver of the offending vehicle was not called upon by any of the parties contesting to step into witness box to narrate facts to the contrary. The collision between the two vehicles, one the offending car and the other motorcycle driven by the deceased has been explained by PW-3, his narration bringing out the negligence on the part of the car driver to be a solitary reason. Therefore, the finding on this issue returned by the tribunal does not call for any interference.

5. The other plea must be rejected for the simple reason there is nothing on record from which it can be deduced that the amount paid by the Delhi Police department was as compensation which would deserve to be adjusted.

6. The claimants have also filed cross objections (CM APPL.24117/2016), the only point pressed in such context being that the non-pecuniary heads of damages awarded by the tribunal are inadequate. Having regard to the ruling of this court in MAC.APP.No.160/2015 *Shriram General Insurance Co Ltd v. Usha* decided by this court on 05.05.2016, the said part does need modification. Instead of amounts granted by the tribunal, 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. This would mean the award stands increased by Rs.1,65,000/- (Rupees One Lakh Sixty Five Thousand Only). Ordered accordingly.

7. The enhanced portion of the award shall also carry interest as levied by the tribunal. It (the enhanced portion) with corresponding interest shall fall to the share of the first respondent (widow).

8. The amount of compensation granted by the tribunal with upto-date interest was deposited by the insurer in terms of order dated 23.03.2015 and it was released with some directions for protecting the corpus in terms of order dated 13.07.2015.

9. The insurer shall satisfy the enhanced portion by requisite deposit with the tribunal within thirty days, making it available to be released to the claimants.

10. The statutory amount shall be refunded to the appellant insurance company.

11. The appeal along with accompanying applications stand disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 11, 2017
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