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

Decided on: 21st September, 2017

\+ MAC APPEAL No. 686/2010

IFFCO TOKIO GENERAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. Pankaj Seth, Adv.

Versus

GEETA DEVI & ORS. ..... Respondents

Through: None.

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

JUDGMENT (ORAL)

1. Ram Bir, aged about 30 years, suffered injuries in a motor vehicular accident that occurred on 28.12.2007 due to negligent driving of car bearing registration no. HR 26AG 9819, admittedly insured against third party risk with the appellant insurance company for the period in question and died in the consequence. The first to fifth respondents (collectively, the claimants), being members of the family of deceased dependent upon him, instituted accident claim case (MACT 578/2008) on 07.03.2008 seeking compensation. The tribunal held inquiry and, by judgment dated 02.07.2010, accepted the claim for compensation holding the car driver responsible.

2. The tribunal computed compensation in the total sum of Rs. 22,97,000/-, calculating it thus:-

S.No.	Heads	Compensation
1.	Loss of dependency	Rs. 21,42,000/-
2.	Loss of love and affection	Rs. 1,25,000/-
3.	Loss of consortium	Rs. 10,000/-
4.	Funeral expenses	Rs. 10,000/-
5.	Los to estate	Rs. 10,000/-
	TOTAL	Rs. 22,97,000/-

3. By the impugned judgment, liability to pay was fastened on the insurer with interest @ 9% per annum.

4. The insurer brought the appeal challenging the computation of loss of dependency submitting that the evidence of Bharat Singh (PW-3) could not have been accepted.

5. The appeal was admitted and put in the list of 'regulars'. When it is taken up for hearing, there is no appearance on behalf of the claimants. The matter has been heard with the assistance of the counsel for the insurer. Record has been perused.

6. Indeed, the evidence of Bharat Singh (PW-3) was on shaky foundation. He claimed to be the proprietor of M/s Bharat Associates Ltd. but no formal proof of existence of any such company was submitted. The income-tax return of PW-3 (mark Z) forming part of the material submitted instead showed that M/s Bharat Associates is the name of a proprietary business rather than that of the company. As per the statement of PW-3, he had employed the deceased in September, 2007 only, in the capacity of "marketing-cum-field". The certificate (mark X) referred to by him during his testimony indicated

the capacity of the deceased to be "field-cum-marketing officer" at gross monthly salary of Rs. 19,200/-. The witness admitted that he had not maintained any record of such employment of the deceased. There was no deduction towards provident fund or employees state insurance corporation's contribution. When asked to show proof of the salary paid to the deceased he claimed that he had paid the said amount to the deceased "in cash", referring to the last payment of the salary for December, 2007 by cheque in the name of the widow, this after death in the accident. Though reliance was placed by him on the income-tax return, he conceded that in the said return there was no mention of the salary paid to the employee. The copies of the computation of the total income and the profit & loss accounts submitted (page 333 to 337 of the tribunal's record) do not reflect any such payment, the amount of salary mentioned there actually being the salary drawn by PW-3 himself.

7. In the above facts and circumstances, while the assessment of the tribunal about the income of the deceased in the sum of Rs. 19,200/- cannot be sustained, it is deemed proper, in absence of any other proof of gainful engagement of the deceased, to assume the income notionally with the help of minimum wages payable to a graduate (4276/-) during the relevant period.

8. After deducting $1/3^{rd}$ towards personal and living expenses, applying the multiplier of 17, correctly chosen by the tribunal, the loss of dependency is calculated as (4276 x 3 ÷ 4 x 12 x 17) Rs. 6,54,228/-, rounded off to Rs. 6,55,000/-.

9. It is noted that the tribunal has not awarded appropriate amounts under the non-pecuniary heads of damages. The appropriate awards are to be added, following the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54 and Shashikala V. Gangalakshmamma (2015) 9 SCC 150*. Therefore, compensation in the sum of Rs. 1,00,000/- each on account of loss of love & affection and loss of consortium and Rs. 25,000/- each towards loss of estate and funeral expense are added.

10. Thus, the total compensation payable in the case is computed as (6,55,000 + 1,00,000 + 1,00,000 + 25,000 + 25,000) Rs. 9,05,000/-. (Nine Lakhs Five Thousand only). The award is modified accordingly. Needless to add, it shall carry interest as levied by the tribunal.

11. It is, however, noted that when the appeal was filed the insurance company had been directed to deposit the entire awarded amount with upto date interest with the Registrar General of this Court vide order dated 11.11.2010. After such deposit had been made by order dated 01.05.2012, 50% (fifty percent) of the awarded amount with proportionate interest was allowed to be released to the claimant. The insurance company had taken no objection to such release at that stage. Be that as it may, it shall have the right to recover the excess paid to the claimants by appropriate proceedings. The balance lying in deposit along with statutory deposit shall be refunded to the insurance company.

12. The appeal is disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 21, 2017
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