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

Decided on: 09th August, 2017

+ **MAC.APP. 430/2016 and CM Nos.28533/2017 & 19520/2016**

IFFCO TOKIO GEN INS CO LTD Appellant
Through: Ms. Harsh Lata for Ms. Shantha
Devi Raman, Advocate

versus

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

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

JUDGMENT (ORAL)

1. Lalit Kumar, aged 42 years, was riding his scooter bearing registration no.DL-3S-BR-5117 (the scooter) around 10.00 p.m. on 23.06.2013 when he met with an accident in the area of near Green Park parking, Uphar Cinema, New Delhi within the jurisdiction of police station Safdarjung Enclave. His wife, Neelam Chaudhary (first respondent herein) learnt about the occurrence and rushed to the spot and arranged for her husband to be shifted to Safdarjung Hospital where he was declared dead. The MLC was prepared. It appears that the local police station had been informed vide DD no.27A but when the local police official reached there, he found no one around at the place of occurrence. In the complaint received through the police control room, mobile telephone no.9810028501 of the fifth respondent

became available and upon being contacted, he informed the local police official that the scooter had fallen down after collision involving his vehicle but since he did not want any action, the dispute having been amicably resolved, each side had gone on their respective ways. On information about the MLC recorded in the police station, belatedly on 24.06.2013, however, another DD entry (no.37A) was recorded when the first respondent met the police official and made a statement to the effect that she had learnt that the accident against the scooter of her husband had involved car bearing registration no.DL-3C-BA-1961 make Honda Civic (the car) which concededly is owned by sixth respondent, the father of the fifth respondent, the latter being its driver at the relevant point of time. The police, thus, registered FIR no.273/2013 in police station Safdarjung Enclave and carried out investigation for offences punishable under Section 279 and 304A of the Indian Penal Code, 1860.

2. The first respondent and other members of the family dependent on the deceased Lalit Kumar, they being second to fourth respondents (all collectively, the claimants), instituted accident claim case (suit no.316/2013), on 30.09.2013, on the allegations that the accident had been caused due to the negligent driving of the car by the fifth respondent. The appellant insurance company was also impleaded, it concededly being the insurer of the car against third party risk for the period in question at the instance of the sixth respondent (registered owner of the car).

3. The Motor Accident Claims Tribunal (Tribunal) held inquiry, and thereafter, by judgment dated 25.02.2016, upheld the claim for compensation holding the fifth respondent responsible for the collision due to the negligent driving. The Tribunal awarded compensation in the sum of Rs.22,82,500/-, it inclusive of Rs.20,47,500/- towards loss of dependency besides Rs.1 Lakh each towards loss of love and affection and loss of consortium, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss to estate. The liability was fastened against the insurer (the appellant) to pay the said amount of compensation with interest at 9% p.a.

4. The present appeal was filed by the insurer submitting that the involvement of the car and negligence on the part of its driver had not been properly proved as the evidence appears to have been manufactured. It is also the contention of the insurer that, in calculating the loss of dependency, the element of future prospects was wrongly added. The insurance company also submits that the non-pecuniary damages and the rate of interest are excessive.

5. The appeal was admitted and directed to be shown in the list of 'Regulars' as per order dated 22.03.2017 though with direction that it should be shown at serial no.1 subject to part-heard. Earlier, by order dated 23.05.2016, the insurance company had been directed to deposit the entire awarded amount with upto date interest with the Tribunal within the period specified, the tribunal being under direction to retain the same in a fixed deposit account in a nationalized bank with no amount allowed to be released. The matter has been taken up today on

the application (CM 28533/2017) moved on behalf of the first to fourth respondents (collectively, the claimants) praying for early hearing. With the consent of the counsel for the appellant, the prayer is granted and the matter is taken up for final hearing.

6. Having heard the learned counsel on both sides and having gone through the Tribunal's record, this court is of the view that the contention about the plea of lack of proof of involvement of the car or negligence on the part of its driver is devoid of merits. It may be that, in the MLC, recorded belatedly, it came to be mentioned by its author that the deceased had a fall on his own but there is no clarity brought out by examination of any witness by any of the contesting respondents in such regard. The widow of the victim had no control over what was being recorded in the MLC by the examining medical officer. She, therefore, cannot be held accountable for such information.

7. The fact remains that, even in the FIR, the local police officer duly mentioned that upon the first intimation being received in the police station on the night of the accident, the fifth respondent had been contacted, his mobile telephone number being available and in the said inquiry, the fifth respondent had admitted the factum of collision between the car and the scooter.

8. Noticeably, the fifth and sixth respondents in answer to the show cause, filed a joint written statement in which they would not deny the fact of collision, the contest being restricted to the allegation of negligence on their part. The claimants examined Phool Chand

(PW-2) who deposed on the strength of his affidavit (Ex. PW2/A) confirming that the accident had occurred as the car had come at uncontrolled speed while it was being reversed in the parking leading to the collision. This part of the evidence has been accepted by the tribunal, and rightly so, and for sound reasons, there being no effort on the part of the contesting respondents including the appellant herein to bring on record the version of the fifth respondent (the driver) to the contrary.

9. For the foregoing reasons, the contention of the insurer about non involvement of the car or negligence on the part of its driver is rejected.

10. It is noted that the claimants had proved through Neeraj (PW-3), an official of the company where the deceased was employed in the capacity of field executive, the terms of his engagement which included the then salary and allowances at Rs.12,500/- p.m. with provision for annual increase. With this clear and irrefutable evidence about the progressive rise in the income, the element of future prospects was correctly added by the tribunal and computation on such basis cannot be grudged.

11. The contention of the insurance company about non-pecuniary damages and the rate of interest being excessive cannot be accepted. While the rate of interest is in accord with the consistent view taken by this court in *Oriental Insurance Co. Ltd. Vs. Sangeeta Devi and Ors.*, MACA 165/2011, decided on 22.02.2016, the non-pecuniary damages are infact found to be deficient. The accident had occurred on 23.06.2013. In fatal accident cases of such vintage, this court has

been awarding Rs.1,50,000/- each towards loss of love and affection and loss of consortium and Rs.50,000/- each towards loss to estate and funeral expenses. [see *Shriram General Insurance Co Ltd v. Usha*, MAC.APP.No.160/2015, decided on 05.05.2016].

12. It is the duty of this court to award just compensation. Since the deficiency has been noticed, the error must be corrected. Therefore, it is directed that instead the non-pecuniary damages awarded by the tribunal, the compensation would include damages under the above mentioned heads at the rates stated above. This would mean, the award will stand enhanced by (Rs.4,00,000/- (-) Rs.2,35,000/-) Rs.1,65,000/-. Ordered accordingly. Needless to add, the enhanced portion shall also carry interest at the rate levied by the tribunal.

13. Thus, while the appeal is dismissed, the award is enhanced by Rs.1,65,000/- with interest, the effect whereof shall be paid by the insurer, it falling to the share of the first respondent (widow) by requisite deposit with the tribunal within 30 days. The amount deposited by the insurance company in terms of the order dated 23.05.2016 shall be released to the claimants in terms of the impugned judgment.

14. The statutory amount shall be refunded.

15. The appeal and the pending application are disposed of in above terms.

Dasti.

R.K.GAUBA, J.

AUGUST 09, 2017/yg