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

Decided on: 19th July, 2017

+ MAC.APP. 462/2016 and CM 21304/2016

RELIANCE GENERAL INSURANCE CO LTD Appellant

Through: Mr. Rajeev M. Roy, Advocate

Versus

JAI PRAKASH & ORS Respondents

Through: Mr. Anshuman Bal, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Nirmala, a widow, aged 55 years, died as a result of injuries suffered in a motor vehicular accident that occurred on 02.07.2011 due to rash driving of three wheeler scooter bearing no.DL-1RK-9713 (TSR). The TSR was concededly insured against third party risk with the appellant / insurance company (insurer).

2. The son and four daughters of the deceased, they being first to fifth respondents herein (collectively, the claimants) took out accident claim case MACT case 39/14 in the wake of detailed accident report (DAR) that was submitted by the local police in the context of the first information report (no.205/11) which had been registered by police station Jahangir Puri respecting the said motor vehicular accident. It appears that there were some other casualties in the same accident and

all claims arising out of such casualties, including the case relating to the death of Nirmala, were clubbed for inquiry by the Motor Accident Claims Tribunal (Tribunal), they resulting in a common judgment dated 31.03.2016, whereby the compensation in the total sum of Rs.7,34,907/- was awarded in favour of the claimants of this case with interest at the rate of 9% p.a. from 02.09.2011, the date of submission of DAR. The appellant / insurance company (insurer) was called upon to satisfy the said award.

3. The insurer is in appeal questioning the computation on the ground the deduction on account of personal and living expenses against the notional income derived should have been to the extent of 50% rather than one-third since the tribunal had concluded that only one out of the five claimants was actually financially dependent upon the deceased, she being the unmarried daughter Mamta.

4. The counsel for the insurance company while submitting that the decision of the tribunal is in accord with the dispensation commended in *Royal Sundaram Alliance Insurance Co. Ltd. Vs. Master Manmeet Singh and Ors.*, ILR (2012) IV Delhi 547 governing the case of deaths of house-wives, it has fallen in error by not deducting 25% in terms of the summary of the conclusions in para 34 (v).

5. *Per contra*, the counsel for the claimants argued that the impugned decision is in accord with the ruling in *Royal Sundaram* (supra) and, therefore, does not call for any interference. He submitted that 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 award in the sum of Rs.25,000/- towards funeral expenses, Rs.10,000/- towards loss to estate and Rs.50,000/- towards loss on love and affection is inadequate.

6. The contention of the insurance company with regard to the deduction to the extent of 50% must be accepted in view of the ruling of the Supreme Court in *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 and of this court in *Reliance General Insurance Co. Ltd. Vs. Murgan and Ors.*, MAC Appeal No.1177/2014, decided on 25.02.2016. But, since there is nothing on record to show that the deceased was above the age of 55 years, deduction on account of 25% as is also additionally sought cannot be allowed.

7. The loss of dependency, thus, is recomputed. The Tribunal had added the element of 15% future prospects and derived the notional income of Rs.7,385.30 on the basis of minimum wages. It applied the multiplier of 11 which was correct in terms of decision in *Sarla Verma* (supra). Thus, the loss of dependency is re-calculated as (Rs.7,385.30/2 x 12 x 11) Rs.4,87,429.80, rounded off to Rs.4,88,000/-.

8. Having regard to the date of the accident (02.07.2011), the non-pecuniary damages need to be revised in terms of ruling in *Shriram General Insurance Co Ltd v. Usha* (supra). Thus, compensation in the sum of Rs.1,50,000/- towards loss of love and affection and Rs.50,000/- each towards loss to estate and funeral expenses are added. The total just compensation awardable in the case is

(Rs.4,88,000/- + Rs.1,50,000/- + Rs.1,50,000/- + Rs.50,000/-)
Rs.8,38,000/-.

9. In view of the above conclusion, instead of being reduced, the compensation is enhanced to Rs.8,38,000/-. Needless to add, the award shall carry interest as levied by the tribunal.

10. By order dated 30.05.2016, the insurance company had been directed to deposit the entire awarded amount with interest, out of which 30% was allowed to be released, the balance kept in interest bearing fixed deposit receipt. The balance shall also now be released. The insurance company shall satisfy the modified award by requisite deposit of the balance with the tribunal within 30 days.

11. The statutory amount shall be refunded after proof is adduced of the award having been fully satisfied.

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

JULY 19, 2017

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R.K.GAUBA, J.