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

Decided on: 4th September, 2017

\+ MAC.APP. 652/2016 & CM No. 30411/2016

BHARTI AXA GENERAL INSURANCE CO LTD ..... Appellant
Through: Mr. Navneet Kumar, Adv.

Versus

RAKESH ARORA & ANR ..... Respondents
Through: Mr. S.N. Parashar, Adv. for R-1 & 2.

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

JUDGMENT (ORAL)

1. Vikas Arora, then 27 years old, a bachelor, died in motor vehicular accident that occurred on 08.06.2013 at about 10.15 a.m. due to negligent driving of motorcycle bearing registration no. DL 4SCE 0823 admittedly insured against third party risk with the appellant insurance company (insurer). His parents, first and second respondents (collectively, the claimants), instituted accident claim case (MACP 205/2013) on 08.07.2013. The tribunal, by its judgment dated 02.02.2016, awarded compensation in the sum of Rs.

71,10,000/- and directed the insurer to pay with interest @ ten per cent (10%) per annum.

2. The insurer is in appeal questioning the calculation of loss of dependency worked out by the tribunal in the sum of Rs. 68,85,000/- arguing that it was erroneously based on the multiplier of 17, keeping in view the age of the deceased and that the element of future prospects of increase was wrongly included, and there being no deduction, wrongly so, on account of income tax liability.

3. On the question of choice of multiplier in the case of death of a bachelor, this Court in case titled *Reliance General Insurance Company Limited vs. Gomti & Ors.,* MAC APP.467/2016, decided on 24th August, 2017, has observed as under:-

> *"6. The question as to the choice of multiplier in cases of deaths of bachelors, had come up before this Court in MAC appeal No. 431/2016 National Insurance Co. Ltd. vs. Mohd. Siddique & Ors. decided on 18th July, 2017, where it was urged on behalf of the insurance company that the law laid down by the Supreme Court in cases of General Manager, Kerala State Road Transport Corporation vs. Susamma Thomas & Ors., (1994) 2 SCC 176 and U.P. State Road Transport Corporation and Ors. vs. Trilok Chandra and Ors., (1996) 4 SCC 362 continues to prevail as the binding precedent. This Court, after examining the issue in light of the decisions in aforementioned cases and in the cases of Reshma Kumari vs. Madan Mohan (2013) 9 SCC 65 and noting the dicta in Central Board of Dawoodi Bohra Community & Anr. v. State of Maharashtra & Anr., (2005) 2 SCC 67; Safiya Bee v. Mohd. Vajahath Hussain @ Fasi, (2011) 2 SCC 94 and Union of India & Ors. v. S.K. Kapoor, (2011) 4 SCC 589, held as under:-*

"16. Since the decision in Trilok Chandra and Ors., (supra) by a bench of three Hon'ble Judges is prior in time in relation to the decisions in Reshma Kumari (supra) and Munna Lal Jain (supra), it is the statement of law on choice of multiplier in the former which is to be taken as the binding precedent. Thus, this court will follow the dictum in the said judgment and adopt the multiplier according to the age of the deceased or that of the claimants, whichever is higher"."

4. The matric certificate of the second respondent (mother) was proved (Ex.PW-2/4) during the inquiry indicating her date of birth as 05.06.1964. In this view, she was 49 years old at the relevant point of time and, therefore, the multiplier of 13 should have been applied.

5. The evidence adduced before the tribunal clearly brought out that the deceased was a qualified Chartered Accountant, he having taken up a job with Singhi Chugh & Kumar Firm, a private firm of chartered accountants. Sachin Chugh (PW-1), a partner of the said firm was examined to prove the letter of appointment (Ex.PW-1/A) and the salary slips for the period December, 2012 to May, 2013 (Ex.PW-1/B). Having regard to the nature of educational qualification and the terms of engagement, the prospects of future increase in income cannot be grudged.

6. However, while calculating the loss of dependency, the income tax liability should have been kept out. The income at the time of death being Rs.45,000/-, the annual gross income comes to Rs. 5,40,000. Since the death had occurred during the financial year 2013-2014, having regard to the rates of taxation applicable, the income

upto Rs. 2,00,000/- being exempt, the total income tax liability is calculated as Rs. 36,800/-. Thus, the net income to Rs.(5,40,000-36,800) Rs. 5,03,200/-, adding the element of future prospects of increase, applying the multiplier of 13 and after deduction of 50% towards personal & living expenses, the loss of dependency is computed, as (5,03,200 x 150 ÷ 100 ÷ 2 x 13) Rs. 49,06,200/-, rounded off to Rs. 49,07,000/-.

7. It is pointed out by the claimants, that the non-pecuniary heads of damages awarded by the tribunal are not in *sync* with the dispensation in similarly placed cases, referring in this context to MAC.APP.No.160/2015 *Shriram General Insurance Co Ltd v. Usha* decided by this court on 05.05.2016. The awards under the heads of loss of love & affection, loss to estate and funeral expenses are revised to Rs. 1,50,000/-, 1,50,000/- and Rs. 50,000/- respectively.

8. Thus, the total compensation comes to (49,07,000 + 1,50,000 + 1,50,000 + 50,000) Rs. 52,57,000/- (Rupees Fifty Two Lakhs Fifty Seven Thousand only). The award is modified accordingly.

9. The tribunal has not given any reasons why it opted to apply the interest @ ten per cent (10%) which is higher than the one ordinarily invoked. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.], the rate of interest is reduced to nine per cent (9%) per annum from the date of filing of the petition till realization.

10. The coercive action against the appellant was stayed by order dated 22.08.2016. The appellant is directed to satisfy the award, modified as above, by requisite deposit with the tribunal within thirty days whereupon the same shall be released to the claimants.

11. The statutory amount shall be refunded.

12. *Dasti.*

R.K.GAUBA, J.

SEPTEMBER 04, 2017
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