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

Decided on: 29th August, 2017

\+ MAC.APP. 1005/2011 and CM APPL.20665/2011

RELIANCE GENERAL INSURANCE CO LTD..... Appellant

Through: Mr. Dilip Kumar, proxy counsel for Mr. Arun Yadav, Advocate

versus

KRISHNA & ORS ..... Respondents

Through: Mr. Neeraj Chaudhary, Advocate for R-1 to R-5.

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

JUDGMENT (ORAL)

1. The appellant insurance company (insurer) was one of the party respondents to the accident claim case (MAC Petition No.143/2010), instituted by the first to fifth respondents (collectively, the claimants) on 17.07.2010 seeking compensation on account of death of Yogender Singh in a motor vehicular accident that had occurred on 16.04.2010 at about 7:15 a.m., involving collision between the two vehicles, they being two wheeler scooter bearing registration No.DL-4S-AQ-3663 (the scooter) and Hyundai Accent car bearing registration No.DL-2F-BD-9000 (the car). The deceased was riding on the scooter when the accident statedly took place due to negligent driving of the car, the latter vehicle admittedly insured against third party risk for the period in question with the appellant (insurer).

2. The Motor Accident Claims Tribunal (Tribunal), after inquiry, upheld the case of the claimants for compensation on principle of fault liability and, by judgment dated 20.08.2011, awarded compensation in the sum of Rs.30,35,000/- (Rupees Thirty Lakhs and Thirty Five Thousand Only) which includes cost of medical treatment incurred for the period the victim was alive after the accident, as also damages under the head of loss of dependency and non-pecuniary damages, under the head of loss of love and affection, loss of consortium, loss to estate and funeral expenses.

3. The insurer while contesting, had taken the plea of breach of the terms and conditions of the insurance policy on the ground the driver of the car (sixth respondent in appeal) was not holding a valid or effective driving licence. This plea was accepted on the basis of evidence led and the insurer was called upon to initially pay the compensation to the claimants, they being third party, but granted recovery rights against the sixth respondent (driver) and the seventh respondent in appeal (owner) relating to the offending vehicle.

4. The insurer, by the appeal at hand, questions the above said judgment, the plea being that compensation on account of loss of love and affection could not have been granted since dependency loss had been compensated; the award is exorbitant; and further that there was no liability to pay since the driver did not hold a valid and effective driving licence.

5. All the contentions urged in the appeal are found to be devoid of merit.

6. The non-pecuniary damages under the loss of love and affection are invariably granted in the fatal accident cases in addition to loss of dependency. The plea that the award is exorbitant is vague and, thus, lacks substance. The interest of the insurance company has been protected by grant of recovery rights.

7. The appeal is, therefore, dismissed.

8. By order dated 16.11.2011, the execution of the award was stayed subject to the insurance company depositing the awarded amount with interest. By order dated 25.02.2013, sixty per cent (60%) of the said deposited amount was allowed to be released. The balance lying in deposit shall now be released to the claimants in terms of the impugned award.

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

10. The appeal along with accompanying application stands disposed of in above terms.

R.K.GAUBA, J.

AUGUST 29, 2017
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