$~15 & 16 *(common order)*

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

Decided on: 13th July, 2017

\+ MAC.APP. 526/2016 and CM APPL.25472/2017

IFFCO - TOKIO GENERAL INSURANCE CO LTD

..... Appellant

Through: Ms. Suman Bagga, Advocate with Mr. Pankaj Gupta, Adv.

versus

MASTER SHIVAM & ANR ..... Respondents

Through: Nemo.

\+ MAC.APP. 528/2016 and CM APPL.25498/2017

IFFCO - TOKIO GENERAL INSURANCE CO LTD

..... Appellant

Through: Ms. Suman Bagga, Advocate with Mr. Pankaj Gupta, Adv.

versus

RAJESH @ RAJESH KUMAR & ORS ..... Respondents

Through: Nemo.

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

JUDGMENT (ORAL)

1. In a motor vehicular accident that took place on 20.11.2010 involving rash driving of car bearing registration No.UP-15AT-2407 (the car) at a place described as Mahesh Marg, Chowki Kasba, Thana Modi Nagar, U.P., two persons suffered injuries, they being Hemlata, a housewife and a child named, Master Shivam, the former (Hemlata)

dying in the consequence. Two claim cases were instituted, first (MACT No.256/2011) by the husband and children of Hemlata (the deceased) and the other (MACT No.257/2011) for and on behalf of Master Shivam. In each case Anil Kumar @ Anil, the driver-cum-owner of the car (he being second respondent in MAC APP.526/2016 and fifth respondent in MAC APP.528/2016) was impleaded in addition to the appellant insurance company, it concededly having issued an insurance policy covering third party risk for the period in question in respect of the car. Both the cases resulted in inquiry leading to a common judgment dated 19.04.2016.

2. The tribunal, having accepted the evidence about negligence driving of the car being the cause of accident, awarded compensation on account of death of Hemlata in the sum of Rs.12,87,122/- following the law laid down by a learned Single Judge of this Court in *Royal Sunderam Alliance Insurance Company vs. Master Manmeet Singh, 2012 ACJ 721.* In the case of claim for injuries suffered by Master Shivam, compensation in the sum of Rs.1,01,504/- was awarded. The Motor Accident Claims Tribunal (the tribunal) directed the insurance company to pay the said amounts with interest though accepting its defence of breach of terms and conditions of the policy and resultantly granting it recovery rights against the owner-cum-driver of the car.

3. The claimants in both the cases despite notice have opted not to appear at the hearing.

4. By the appeals at hand, the insurance company assails the two awards. In the case of claim on account of death of Hemlata, the sole

contention urged is that in case of death of a housewife also, deduction on account of personal and living expenses against the assumed income should have been made in calculating the loss of dependency. This appeal, and the appeal in case of Master Shivam also raises a common issue it being that instead of recovery rights, the insurance company should have been exonerated, since the drier is also the owner of the car and he was not holding a valid or effective driving licence.

5. The contention with regard to calculation of loss of dependency in the case of housewife is pressed on the basis of decision of this court in *Reliance General Insurance Company Limited vs. Murgan & Ors., MAC APP.1177/2014,* decided on 25.02.2016. It was held in that case that even in case of calculation of loss of dependency on account of death of a housewife, deduction towards personal and living expenses as per judgment of the Supreme Court in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121* is bound to be made. In this view, the loss of dependency is re-calculated.

6. Since the tribunal went by minimum wages which were calculated as Rs.63,210.7 per annum, one-third is deducted and on multiplier of 15 (deceased being 35 years old), and after adding 25% towards future prospects, the loss of dependency comes to (63210.7 x 125÷100 x 2÷3 x 15) Rs.7,90,133.74 rounded off to Rs.7,91,000/-. Adding the other components in the total sum of Rs.60,000/- as awarded by the tribunal, compensation in the case of death of Hemlata

is computed as (7,91,000/- + 60,000/-) Rs.8,51,000/-. The award is modified accordingly. Needless to add, it shall carry interest as ordered by the tribunal. Needless to add, the apportionment of the award shall remain the same as directed by the tribunal.

7. By order dated 20.07.2016, the entire awarded amount with upto date interest was directed to be deposited with UCO Bank, Delhi High Court Branch, New Delhi from out of which ten percent (10%) was released to the first respondent, the balance kept in fixed deposit receipts. The Registry shall now calculate the amounts payable to the claimants in terms of the award as modified and release the same to the respective claimants, refunding the balance to the insurance company.

8. Since the recovery rights have been granted to the insurance company, its interest is duly protected, there is no occasion for interference in that regard.

9. Both the appeals are disposed of in above terms.

10. The statutory amount, if deposited, shall also be refunded to the appellant insurance company.

R.K.GAUBA, J.

JULY 13, 2017
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