$~37

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

% **<u>Date of Decision: 16th January, 2017</u>**

\+ MAC.APP.1139/2013

THE NEW INDIA ASSURANCE CO LTD ..... Appellant
Through: Mr. Shoumik Mazumdar, Adv.

versus

MONIKA SEKHON & ORS ..... Respondents
Through: Mr. Atul Rathi and Mr. Nitinjya Chaudhary, Adv.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

<u>JUDGMENT (ORAL)</u>

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs.13,12,000/- has been awarded to respondents No.1 to 3.

2. The accident dated 05th July, 2005 resulted in the death of Vikram Singh. The deceased was aged 33 years at the time of accident and was survived by his widow and two minor daughters who filed the claim petition before the Claims Tribunal. The deceased was self employed in the business of sale and purchase of automobiles. It was claimed that he was earning Rs.15,000/- per month. However, Claims Tribunal took income of the deceased as Rs.6,000/- on the basis of income tax returns, added 50% towards future prospects, deducted 1/3rd towards personal expenses and applied the multiplier of 16 to compute the loss of dependency as Rs.11,52,000/-. The Claims

Tribunal awarded Rs.50,000/- towards loss of love and affection, Rs.50,000/- towards loss of consortium, Rs.50,000/- towards loss of estate and Rs.10,000/- towards funeral expenses. The total compensation awarded by the Claims Tribunal is Rs.13,12,000/-.

3. Learned counsel for the petitioner urged at the time of hearing that the compensation awarded by the Claims Tribunal is on higher side. It is further submitted that future prospects of 50% be set aside. It is further submitted that income of the deceased be reduced from Rs.6,000/- on the ground that the shop in which deceased carrying business may still be operational. The appellant seeks recovery rights against the respondents No.4 and 5 on the ground that the driving licence of the driver was fake. The appellant also seeks reduction of the rate of interest from 12% to 9%.

4. With respect to the quantum of compensation awarded by the Claims Tribunal, this Court is of the view that the compensation awarded by the Claims Tribunal is just, fair and reasonable and does not warrant any reduction. The Claims Tribunal has taken the income of the deceased on the basis of his income tax returns. There is no infirmity in addition of 50% considering that deceased was aged 33 years at the time of accident.

5. The appellant examined the witness from R.T.O. Muradabad who deposed that the alleged driving licence in the name of the driver was registered in the name of one Mahipal. The appellant also examined the Senior Assistant of its company who proved the notice under Order XII Rule 8 of CPC as Ex.R3W3/1 to Ex.R3W3/4. The driver of the offending vehicle produced the copy of the driving

licence bearing No. M-19285/MBD/92 along with the verification report issued by RTO, Muradabad which certified that the aforesaid driving licence issued by Road Transport Authority was valid from 29th May, 2001 to 28th June, 2015. The appellant did not lead any evidence to rebut the aforesaid driving licence and the RTO report produced by the driver of the offending vehicle. In that view of the matter, the appellant is not to the recovery rights against the respondents No.4 and 5.

6. There is merit in the appeal which is hereby dismissed. The compensation of Rs.13,12,000/- along with interest @ 9% is upheld. However, the penal rate of interest @ 12% is set aside. The statutory amount be refunded back to the appellant.

7. The appellant has deposited the entire award amount with the Claims Tribunal out of which 80% award amount has been released to respondents No.1 to 3 in terms of the order dated 13th December, 2013.

8. List for disbursement of balance 20% of the award amount on 11th April, 2017.

9. Respondents No.1 to 3 shall remain present in Court on the next date of hearing along with the particulars of their savings bank account near the place of their residence.

10. Copy of this judgment be given *dasti* to learned counsels for the parties.

JANUARY 16, 2017 **J.R. MIDHA, J.**

ak