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

Decided on: 7th July, 2017

+ **MAC APPEAL 490/2015**

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD

..... Appellant

Through: None.

versus

SAROJ DEVI & ORS.

..... Respondents

Through: Mr. Pratap Singh, Adv. for R-1
to 5.

Mr. K.P. Mavi, Adv. for ESIC.

+ **MAC APPEAL 785/2016**

SAROJ DEVI & ORS.

..... Appellants

Through: Mr. Pratap Singh, Adv.

versus

BAL BHAGWAN & ORS.

..... Respondents

Through: Mr. K.P. Mavi, Adv. for ESIC.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Jaibir Singh, employed as a driver in a private company Capital Vehicle Sales Ltd. in MG Toyota, died in a motor vehicular accident that occurred on 12.07.2011. An accident claims case was instituted

by his widow and other members of the dependent family (MACP No. 350/2011/2014), impleading besides the driver and owner of the offending vehicle (HR 55D 0012), its insurer Bajaj Alliance Life Insurance Company Ltd. (insurer) as respondents. The tribunal, by judgment dated 30.03.2015, upheld the case of the claimants that the accident had occurred due to negligent driving of the said vehicle. Thus, the insurer was held liable to indemnify, the owner of the vehicle being vicariously liable. The tribunal granted compensation in the sum of Rs. 19,77,592/- with interest calling upon the insurer to pay.

2. The insurer instituted appeal (MAC Appeal No. 490/2015) which is pressed only on the contention that the deceased was a member of an insurance scheme under Employees State Insurance Act, 1948, and consequently, his legal heirs have been receiving benefits from Employees State Insurance Corporation (ESIC) and that there cannot be a total double benefit gained. The claimants have come up with their appeal (MAC Appeal No. 785/2016), raising the contention that the dependency loss has been inadequately worked out since the tribunal assumed the income to be Rs.6,725/- per month only, ignoring the fact that the deceased was also entitled to certain other allowances they being Rs.770/- per month under the head of pick and drop and Rs.1400/- described simply as incentive, as brought out through the evidence of PW-3, accountant of the employer.

3. The contentions raised by the insurer concerning the benefits drawn under the Employees State Insurance Act, 1948 were noticed and court notice was issued to ESIC by order dated 9.8.2016 in MAC

Appeal No. 490/2015. In terms of the directions given, eventually ESIC submitted affidavit of its Social Security Officer which came on record on 6.1.2017. The said affidavit clarifies that the amounts received by the widow and two sons of the deceased are benefits under the Employees State Insurance Act, 1948 which are not in the nature of compensation. Therefore, no benefit of discount for such statutory dues received, or receivable, by the widow or dependent family members can be taken by the insurance company whose liability in terms of the insurance policy qua the offending vehicle arises out of the statutory provisions under the Motor Vehicles Act, 1988 and the contract of insurance taken out by the registered owner of the vehicle.

4. The appeal of the insurance company, thus, is meritless and is liable to be dismissed. Ordered accordingly.

5. While it is true that the evidence of PW-3, an accountant from the office of the employer of the deceased, shows certain benefits in the nature of allowances and incentives being also paid to the deceased, they cannot be taken into consideration since there is nothing to show that they were consistent or regular emoluments. At the same time, however, it is noted that the income assessed by the tribunal for working out the loss of dependency is less than even the minimum wages prevailing for the period in question.

6. The evidence clearly shows that the deceased was engaged by the private company as a driver. He was, thus, a skilled workman. The minimum wages payable to a skilled workman as on 12.07.2011 were Rs. 7826/- per month. The loss of dependency had to be worked out on such basis.

7. The dependent family members were five in number and, therefore, $\frac{1}{4}^{\text{th}}$ is to be deducted towards personal and living expenses. The monthly loss of dependency comes to $(7826 \times 3 \div 4)$ Rs. 5869.50 rounded off to Rs. 5870/-.

8. The deceased was 35 years old at the relevant time and the tribunal correctly picked up the multiplier of 16. After adding future prospects to the extent of 50% inasmuch as he was in regular employment, the loss of dependency, thus, is calculated as $(5870 \times 150 \div 100 \times 12 \times 16)$ Rs. 16,90,560. Since the tribunal awarded only the sum of Rs. 14,52,592/-, under this head, the net increase is calculated as $(16,90,560 - 14,52,592)$ Rs. 2,37,968/-. The total compensation in the case works out $(19,77,592 + 2,37,968)$ Rs. 22,15,560/- rounded off to Rs. 22,16,000/- . The compensation in the case is enhanced accordingly. Needless to add, it shall carry interest as levied by the tribunal.

9. The entire enhanced portion of the compensation shall be paid to the widow (first appellant in MAC Appeal No. 785/2016).

10. By order dated 01.07.2015 on the file of MAC Appeal No. 490/2015, the insurer had been directed to deposit 50% of the awarded amount with the Registrar General of this Court to be invested in fixed deposit receipt. The said amount lying in fixed deposit shall now be paid to the claimants in terms of the award.

11. The insurance company is directed to satisfy the award, as modified above, by requisite deposit with the tribunal within 30 days from today.

12. The amount deposited shall be released in terms of the award.

13. The statutory amount deposited by the insurer shall be refunded upon proof being furnished as to the satisfaction of the award.

14. Both these appeals stand disposed of in above terms.

R.K.GAUBA, J.

JULY 07, 2017

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