$~R-631 & 632

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

Decided on: 04th December, 2017

\+ MAC APPEAL 1122/2012 and CM 17979/2012

RELIANCE GENERAL INSURANCE COMPANY LTD. ..... Appellant

Through: Mr. A.K. Soni, Advocate

versus

JAGBIR KAUR & ANR. ..... Respondents

Through:

\+ MAC APPEAL 171/2013

JAGBIR KAUR ..... Appellant

Through: None

versus

ADITYA AGGARWAL & ANR. ..... Respondent

Through: Mr. A.K. Soni, Adv. for R-2 / insurance company

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

JUDGMENT (ORAL)

1. On the accident claim case of Jagbir Kaur (claimant) arising out of detailed accident report (DAR) registered on the report of the police pursuant to investigation into first information report (FIR) no.309/2011 of police station R.K. Puram, the Motor Accident Claims Tribunal (Tribunal), by judgment dated 27.07.2012, awarded

compensation in her faovur in the total sum of Rs.10,49,000/-, fastening the liability on Reliance General Insurance Company Ltd. (insurer), it concededly having issued an insurance policy covering third party risk in respect of the car bearing registration no.DL-8CT-1224, driving of which in a negligent manner had resulted in the death of Surender Gautam giving rise to the cause of action.

2. The claimant as well as the insurer instituted these appeals feeling aggrieved with the quantum of compensation determined by the tribunal. The prime contention of the insurer is that the tribunal has assumed the income of the deceased at Rs.10,000/- on the basis of statement of one Gulbir Singh (CW-1) who had been summoned as a court witness, without veracity of such evidence being tested in any manner. The claimants, on the other hand, have certain other sets of grievance to agitate submitting that the compensation granted is deficient.

3. Both appeals were put in the list of 'Regulars' as per order dated 23.02.2016. When they are called out for hearing, there is no appearance on behalf of the claimants. The learned counsel for the insurer has been heard.

4. A perusal of the record of the tribunal shows that the procedure adopted by the tribunal cannot be approved of. The claimant had appeared as her own witness (PW-1) on the strength of her affidavit (Ex. PW1/A) on 23.03.2012. Thereafter, the matter was adjourned for evidence of the witness of the respondents or for arguments. On 03.07.2012, the tribunal recorded as under :-

"...It is seen from record that claimants / claiming that Sh. Surender Gautam (now deceased) was working as a tailor with Mosco Tailors and earning Rs.10,000/- per month from the aforesaid vocation and to substantiate the same the claimants placed on record a certificate issued by one Gulbeer Singh for Mosco Tailors / proprietor / specialist in Genets Wear in 2681 Vishwas Nagar, Sahahdra, Delhi. In order to adjudicate the matter on merits, the examination of Gulbeer Singh who issued a certificate dated 05.02.2011 is imperative. Let court notice be issued to Gulbeer Singh (the aforesaid person) through concerned IO at state expenses. Adjourned for RE/aforesaid purposes and arguments for 27.07.2012..."

5. Though the matter was adjourned by the above order to 27.07.2012, the file was again taken up by the Presiding Officer on 23.07.2012, when she recorded as under :-

"..From the available material on record, the following issues were framed on 23.03.2012 :-
Issues :
1. *Whether deceased suffered fatal injuries in an accident which took place on 16.11.2011 at about 12.00 a.m. on account of rash and negligent driving of vehicle bearing no.DL-8CT-1224 driven and owned by respondent no.1 and insured with respondent no.2? OPP*
2. *Whether petitioners are entitled to compensation? If so, to what amount and against which of the respondents?*
3. *Relief*

6. The reference in the above mentioned order to the proceedings of 23.03.2012 is unsupported by any material on record. In fact, no proceedings bearing the date 23.03.2012 are found on the record. Be that as it may, on 27.07.2012, to which the case had been earlier

adjourned by order dated 03.07.2012, the short order was recorded as under :-

> *"Present: None*
> *Vide separate order of even date, the award is pronounced in the open court whereby injured is awarded compensation Rs.10,49,000/-. Let copy of this order, award and petition duly certified by Reader be given to Nazir. Attested copy of award be given dasti to parties free of cost.*
> *File be consigned to record room…"*

7. The corresponding short order dated 27.07.2012 would not so reflect but the impugned judgment which was passed on the same date does state that Gulbir Singh, the person described as the proprietor of Mosco Tailors, had been examined as a court witness. The testimony of the said court witness reads thus :-

> *"…I am the proprietor of M/s. Mosco Tailors office at 2681, Pandav Road, Gali No.10, Vishwas Nagar, Shahdara, Delhi-32. Copy of my letter pad of proprietorship firm is CW1/1. The deceased Surender Gautam S/o. Late Murari Lal Gautam R/o. 299, Ambedkar Chowk, Munirka Village, New Delhi was working as Tailor in my firm since last two years. I used to give him Rs.10,000/- per month as salary and Rs.2,000/- per month as conveyance. The deceased Surender Gautam was very hardworking tailor and his future was very bright. I had issued a salary certificate on my letter pad copy of the same is already exhibited as Ex. PW1/14 bearing my signature at point A…"*

8. Neither the short order nor the judgment nor the deposition reveal any opportunity having been given to the parties that were contesting to cross examine the said witness. This, to say the least, is violation of the principles of natural justice.

9. Against the above backdrop, there is no option before this court but to set aside the impugned judgment and to remand the matter to the tribunal for proper inquiry and fresh adjudication. It is ordered accordingly.

10. Both the parties are directed to appear before the tribunal on 06.02.2018.

11. By order dated 16.10.2012, the insurance company had been directed to deposit 75% of the awarded amount with up-to-date interest with the UCO Bank, Delhi High Court branch and from out of such deposit, fifty percent (50%) was directed to be released to the claimants. The balance lying in deposit shall be presently refunded alongwith statutory deposit to the insurance company. The amount already received by the claimants shall be liable to be adjusted against the award as determined by the tribunal by its fresh adjudication.

12. Both the appeals and the pending application are disposed of in above terms.

R.K.GAUBA, J.

DECEMBER 04, 2017
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