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

Decided on: 31st July, 2017

\+ MAC.APP. 426/2015 and CM No.13999/2017

REGIONAL MANAGER, NATIONAL INSURANCE CO LTD ..... Appellant

Through: Mr. Amit Gaur for Mr. Pradeep Gaur, Advocate

versus

ANITA DEVI & ORS ..... Respondents

Through: Mr. S.K. Pandey, Adv. for R-1 to 6 with R-1 & 5 in person

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

JUDGMENT (ORAL)

1. Arun Kumar Upadhyay, was employed as a constable with Delhi Police and at a time when he was on official duty on 05.05.2013, he suffered injuries in a motor vehicular accident that occurred due to negligent driving of a motor vehicle described as rural transport vehicle bus bearing registration no.DL-1VC-0128 (RTV) and died in the consequence. His wife and other members of the family dependent on him, they being first to sixth respondents, instituted accident claim (MACA 142/13) seeking compensation.

2. The Motor Accident Claims Tribunal (Tribunal), after inquiry, by judgment dated 27.03.2015, upheld the case for compensation on the principle of fault liability and awarded compensation in the sum of Rs.47,05,330/- awarding it with interest at the rate of 9% p.a. directing the insurer to pay.

3. The insurance company challenges the judgment of the tribunal and presses the appeal on the sole ground that the *ex-gratia* amount of Rs.10 Lakhs which had been received by the widow should have been deducted from the compensation, relying in this context on the decision of the Supreme Court in *Reliance General Insurance Company Vs. Shashi Sharma and Ors., (2016) 9 SCC 627*.

4. The appeal was admitted and directed to be shown in the category of regular matters as per order dated 11.11.2016. It has come to be listed in the context of application moved by first and fourth respondents for releasing of certain amounts which had been put in fixed deposit receipts on account of pressing needs. On being asked, the learned counsel on both sides submitted that they are ready to argue on the main appeal, which has consequently been taken up for final hearing and disposal.

5. The submission of both sides having been heard and the record perused. This court finds that the decision in *Shashi Sharma* (supra) would not apply to the claim case of the respondents. Noticeably, in *Shashi Sharma* (supra), the question considered was as to whether ex gratia payment made by the Government of Haryana under Rules notified in 2006 to grant on compassionate grounds *ex gratia* financial assistance to members of the family of a deceased Government

employee was to be deducted from compensation awardable in a case brought before the Tribunal under Section 166 of the Motor Vehicles Act. The Supreme Court held that the amount receivable by the dependants / claimants "*towards*" the head of "*pay and allowances*" in the form of *ex gratia* financial assistance could not be paid second time to the claimants. The said decision was based on a finding that the amount payable under the 2006 Rules of the Government of Haryana were towards pay and allowances. In the present case, the respondents had examined R3W1 SI Ashok Tyagi, who proved the details of payment made to the legal heirs by Delhi Police, such details being Ex. R3W1/A. The said evidence simply shows an amount of Rs.10 Lakh was paid to the next of kin. There is nothing in the evidence from which it could be assumed that such *ex gratia* payment was towards "*pay and allowances*".

6. In the above facts and circumstances, the decision of the Supreme Court in *Helen C. Rebello and Ors., Vs. Maharashtra State Road Transport Corporation and Anr., 1999 (1) SCC 90* would apply.

7. Thus, the appeal is devoid of substance and is dismissed.

8. By order dated 19.05.2015, the insurance company had been directed to deposit a sum of Rs.37,05,330/- with proportionate interest and out of the said deposit, some portion was allowed to be released to the first and fourth respondents with further liberty given to them to draw monthly interest, the balance having been kept in fixed deposit account. The balance amount lying in deposits shall now be released in terms of the impugned judgment. The insurance company must

satisfy the award fully by requisite deposit of the balance with the Tribunal within thirty days.

9. For any premature release of the amount kept in fixed deposit receipts, the claimants have the liberty to approach the Tribunal with requisite applications.

10. The statutory amount shall be refunded after proof is adduced of award having been satisfied.

11. The appeal and the pending application are disposed of in above terms.

R.K.GAUBA, J.

JULY 31, 2017
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