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

Decided on: 15th September, 2017

+ **MAC APPEAL No. 341/2017**

BHARTI AXA GENERAL INS. CO. LTD. Appellant

Through: **Ms. Suman Bagga & Mr.
Pankaj Gupta, Advs.**

versus

NEETU KADIYAN & ORS. Respondents

Through: **Mr. Sumit Gupta, Adv. for R-1
to R-4.**

+ **MAC APPEAL No. 490/2017**

NEETU KADIYAN & ORS. Appellants

Through: **Mr. Sumit Gupta, Adv.**

versus

BHARTI AXA GENERAL INS. CO. LTD.& ORS.

..... Respondents

Through: **Ms. Suman Bagga & Mr.
Pankaj Gupta, Advs. for
insurance company.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Manish Kadiyan, a practitioner in law, working as Retainer Advocate with KNM & Partners died, at the age of 33 years, in motor vehicular accident that occurred on 08.02.2014 involving negligent

driving of Tata Safari bearing registration no. DL 8CM 7734, it admittedly insured against third party risk with Bharti Axa General Insurance Co. Ltd. insurance company (insurer), appellant in MAC Appeal No. 341/2017. His wife and other members of the family dependent upon him (the claimants), they being appellants in MAC Appeal No. 490/2017, instituted accident claim case (MACT case no. 399/2014) seeking compensation under Section 166 Motor Vehicles Act, 1988 on 09.09.2014. The motor accident claims tribunal held inquiry and, by judgment dated 05.11.2016, accepted the case of the claimants for compensation holding the driver of the said vehicle responsible for the accident and consequently found the owner of the said vehicle to be vicariously liable. The tribunal determined the compensation thus:-

S.No.	Under head	Compensation
1.	Loss of Dependency	Rs. 90,63,360/-
2.	Funeral charge	Rs. 50,000/-
3.	Loss of love and affection	Rs. 1,50,000/-
4.	Loss of consortium	Rs. 1,50,000/-
5.	Loss of estate	Rs. 50,000/-
6.	Medical bills	Rs. 6,08,569/-
	Total	Rs.1,00,71,929/-

2. The liability to pay the afore-mentioned amount was fastened on the insurer, with interest @ 9% per annum having been levied from the date of filing of the petition (09.09.2014).

3. The claimants are in appeal (MAC Appeal No. 490/2017) submitting that the income on the basis of which loss of dependency was computed was under-assessed. The insurer, on the other hand, is also in appeal (MAC Appeal No. 341/2017), submitting that income tax liability was not deducted while computing the loss of dependency. Having heard the learned counsel on both sides and having gone through the record with their assistance, this court finds that both the appeals must be accepted.

4. The claimants had examined Vijay Nair (PW-1), a partner of the firm with which the deceased was attached as Retainer Advocate. They also examined Ajay Malik (PW-2), office Superintendent of the income tax department to prove the income tax returns (ITRs) submitted by the deceased during his lifetime for the assessment years 2010-2011 to 2013-2014 (collectively Ex.PW-2/1), which would correspond to financial years 2009-2010 to 2012-2013, the last being the financial year preceding the year in which the death occurred. The claimants also examined the widow Neetu Kadiyan (PW-4) and, through her testimony, brought on record, computation sheets and the ITR for the assessment year 2013-2014 (Ex.PW-4/2 – collectively).

5. The ITRs for the assessment years 2010-2011 to 2013-2014 reflect progressive rise in the earnings of the deceased, the income declared by him for the consecutive years in the amounts of Rs.

1,91,177/-, 2,35,248/-, 3,24,863/-, and 5,03,520/- respectively. The witness (PW-1) examined by the claimants, he being partner with KNM & Partners, also proved that the deceased had been initially engaged by the said firm w.e.f. 15.09.2007, initially, at retainer fee of Rs. 12,000/- per month which had risen over the period, the retainership of Rs. 75,000/- per month being the last drawn just before the death. His evidence to this effect is corroborated by the TDS certificates (Form 16A) (Ex.PW-1/1) for the four quarters 2014-2015 which would correspond to the financial year 2013-2014, the last payment obviously being and for upto 08.02.2014 when the death occurred. The income reflected in these TDS certificates totals upto Rs. 9 lakhs, the last payment reflected having been made on 03.02.2014.

6. Against the above backdrop, it is argued on behalf of the claimants that the tribunal should have accepted the claim of income of the deceased to be in the sum of Rs. 9 lakh per month it being the income for the last financial year when he was alive. Against such irrefutable evidence, as mentioned above being available, there is no reason why the tribunal should have ignored the same and not gone by the TDS Certificates for AY 2014-2015. The plea of the claimants that the calculation of loss of dependency be computed on the basis of earnings at Rs. 9 lakh per annum is, thus, accepted.

7. The learned counsel on both sides agree that, going by the prevalent rates of the income tax for AY 2014-2015, the tax liability against the annual income of Rs. 9 lakh would be approximately

95,000/-. The net annual income, thus, comes to (9,00,000- 95,000) Rs. 8,05,000/-. Since the claimants have given irrefutable proof of progressive rise in income, the element of future prospects of increase to the extent of 50% is added. As the deceased was born on 24.09.1981 and consequently was 33 years in age at the relevant time, the loss of dependency is worked out, after deduction of 1/4th from his income, with the multiplier of 16. The loss of dependency is recomputed as $(8,05,000 \times 150 \div 100 \times 3 \div 4 \times 16)$ 1,44,90,000/-. Adding the other components of damages awarded by the tribunal, the total compensation payable in the case comes to 1,44,90,000 + 50,000 + 1,50,000 + 1,50,000 + 50,000 + 6,08,569) Rs. 1,54,98,569/-, rounded off to Rs. 1,54,99,000/- (Rupees one crore fifty four lakhs and ninety nine thousand only). The award is modified accordingly. Needless to add, it shall carry interest as levied by the tribunal.

8. Since suitable apportionment has already been made in favour of other claimants, it is directed that the entire enhanced portion of the award shall fall to the share of the first claimant (Neetu Kadiyan) to be released to her in the form of fixed deposit receipt in a nationalized bank in her name for a period of ten years with right to draw periodic interest.

9. The insurance company had been directed by order dated 26.04.2017 to deposit the entire awarded amount with accrued interest with the Registrar General of this Court, which deposit was allowed to be released to the claimants, leaving an amount of Rs. 8 lakhs only. Since the compensation has been enhanced, the amount retained will

also be released to the claimants in terms of the impugned judgment. The insurer is directed to deposit the balance of its liability with the tribunal within thirty days.

10. The statutory amount shall be refunded after compliance of the award has been shown by the Insurance Company.

R.K.GAUBA, J.

SEPTEMBER 15, 2017

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