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

Decided on: 28th July, 2017

\+ MAC.APP. 799/2016 and CM 36829/2016 and 8381/2017

IFFCO TOKIO GENERAL INSURNACE CO LTD ..... Appellant

Through: Mr. Brijesh Bagga, Advocate

versus

MANJU & ORS ..... Respondents

Through: Mr. Amandeep Kaur and Mr. Sumit Gupta, Advocates for R-1 to 3

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

JUDGMENT (ORAL)

1. Shashi Bhushan died as a result of the injuries suffered in a motor vehicular accident that occurred on 01.04.2012 involving rash driving of a motor vehicle described as Toyota Fortuner bearing registration no.HFR-26-BP-6829 which was admittedly insured against third party risk with the appellant insurance company. His legal heirs (first to fourth respondents) instituted accident claim case (MACT 261/12) in the wake of a detailed accident report (DAR) submitted by the police pursuant to the investigation into corresponding criminal case. In the said proceedings besides the driver and owner of the offending vehicle, the appellant insured was also impleaded as a a party

2. The Tribunal after inquiry, by judgment dated 15.07.2016, awarded compensation in the sum of Rs.21,15,000/- and directed the insurer to pay with interest. The said award includes compensation worked out on loss of dependency, the income having been assessed on the basis of income declared in the income tax returns (ITRs) for the assessment year 2008-2009 and 2009-2010. The deceased was 49 years old at the relevant point of time and the factor of 30% of prospects of future increase was added.

3. The insurer presses the appeal to question the computation of the loss of dependency on the ground that the ITRs for the assessment years 2010-2011 and 2011-2012 were withheld and that the Tribunal had indicated at one stage that the average of the incomes for the previous two assessment years could be the basis of calculation. It is also argued that in the facts and circumstances, the element of future prospects of increase should not have been added.

4. Having given consideration to the submissions, this court is of the opinion that the appeal lacks merits on both counts and must be dismissed. The deceased may have committed default in submitting ITRs for the assessment year 2010-2011 and 2011-2012 but this would not mean that he would have not continued to be in the same gainful employment from which he had been earning previously, the said income having been declared to the income tax authorities. If something was to be read into such omission, it was for the contesting respondents to have the record summoned to prove facts to the contrary. The continuity of gainful engagement in the same work will have to be assumed. Given the fact that the previous ITRs indicated

progressive rise, and bearing in mind the age of the deceased at the relevant point of time, the addition of future prospects of increase to the extent of 30% in terms of the decision of the Supreme Court in *Sarla Verma & Ors., Vs. DTC and Anr., (2009) 6 SCC 121* cannot be faulted.

5. The appeal is, therefore, dismissed. The pending applications also stand dismissed.

6. The appellant would have deposited the entire awarded amount with interest in terms of order dated 03.10.2016. The said amount shall be released to the claimants in terms of the impugned judgment.

7. The statutory amount shall be refunded.

R.K.GAUBA, J.

JULY 28, 2017
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