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

Decided on : July 10, 2017

+ MAC.APP. 754/2016 and CM Nos. 33674/2016, 17291/2017
(early hearing)

UNITED INDIA INSURANCE CO LTD Appellant

Through: Mr. L.K. Tyagi, Advocate

versus

REKHA & ORS Respondents

Through: Mr. M.K. Sharma, Advocate for
R-1 to 4

+ MAC.APP. 999/2016 & CM No.17290/2017 (early hearing)

REKHA & ORS Appellants

Through: Mr. M.K. Sharma, Advocate

versus

UNITED INDIA INSURANCE CO LTD Respondent

Through: Mr. L.K. Tyagi, Adv. for R-1

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. These appeals were entertained by the learned predecessor bench and by order dated 16.09.2016 on MACA No.754/2016, unconditional stay was granted against enforcement of the award as a consequence of which the claimants have not received any amount till

date. These appeals have been listed on applications (CM 17291/2017 and 17290/2017) of the claimants seeking early hearing.

2. Having regard to the facts and circumstances noted above, the prayer has been granted. The hearing is pre-poned. The learned counsel on both sides submit that they are ready to argue today. With their consent, the appeals have been taken up for final hearing.

3. Ravinder Kumar Verma, then aged 54 years, employed as Branch Manager in Punjab National Bank in Shamli, U.P. died as a result of injuries suffered in a motor vehicular accident that occurred at about 8.20 p.m. on 27.12.2013 statedly due to negligent driving of car bearing no. UP-15AZ-8351 (the car), it being concededly insured against third party risk with United India Insurance Company Ltd. (insurer), the collision also involving motor cycle driven by the deceased. The accident took place at a level crossing on railway lines in Budana, District Shamli, U.P. Four persons, they being the wife, son and parents of the deceased (collectively the claimants) joined together to institute accident claim case (MACP 85/14) seeking compensation under Section 166 of Motor Vehicles Act, 1988. In the said proceedings, the driver and owner of the car, besides the insurer, were impleaded as parties. The claim case was contested.

4. By judgment dated 04.06.2016, the Tribunal upheld the contention about negligent driving of the car being the cause of accident. It awarded compensation in the sum of Rs.54,21,001/- with interest at the rate of 12% p.a. in favour of the claimants directing the insurance company to pay.

5. The insurer has come up with appeal (MACA 754/2016) questioning the award on three grounds; one, that there was no involvement of car in the accident; second, that the negligence on the part of the driver was not strictly proved; and third, that the levy of interest at 12% p.a. is excessive.

6. The claimants, on the other hand, have also come up with an appeal (MACA 999/2016) submitting that the compensation awarded is not adequate in that deduction towards personal and living expenses has been wrongly made to the extent of 1/3rd, excluding the claim of dependency of the second and fourth claimants (i.e. the son and father of the deceased) and that the element of future prospects of increase has not been taken into account.

7. The contention of the insurer as to non-involvement of the car in the accident or the negligence on the part of its driver are without merit. It may be that the first information report (FIR) was initially registered by local police noting it as a hit and run case, there initially being no clue as to the identity of the offending vehicle. But then, it is trite that FIR is only the starting point of investigation and it cannot possibly be a compendium of the entire facts. The facts are brought out by investigation which follows the registration of the FIR. As noted by the Tribunal, the involvement of the car is inherent in the pleadings of the driver and owner wherein they claimed that the accident had occurred on account of the negligence on the part of the motor cyclist (i.e. the deceased himself) rather than on the part of the driver of the car. The fact that the motor cycle suffered some damage

in the front wheel does not by itself mean that the collision could not have taken place with the car hitting from behind.

8. Similarly, the argument of the insurer that the car could not have picked the speed of over 60 kms per hour immediately upon opening of the gates of the level crossing alongside the railway lines is without merit. The fact that the car did actually pick up such excessive speed itself shows the rash manner in which it was driven.

9. The contentions of the claimants as to error in computation of compensation seems to be correct. The tribunal has excluded the claim of dependency of the son and father without articulating any reasons for the same. It is clear from the evidence that the son, though a major, was still a student, yet to settle down in some avocation. In these circumstances, he would still be financially dependent on his late father. The father of the deceased was 60 years old as on 01.05.1995 as per election identity card (Ex. PW1/7). Since the accident took place on 27.12.2013 he would be almost 74 years old on the date the cause of action had arisen. The widow who appeared as witness (PW-1) testified that the father and the son were also dependents. No effort was made to discredit her testimony in this regard.

10. In above facts and circumstances, it was improper on the part of the tribunal to exclude the claims of the son and father. In this view, there claims had to be considered. On the basis of there being four claimants, the deduction on account of personal and living expenses had to be to the extent of $1/4^{\text{th}}$ rather than $1/3^{\text{rd}}$, only.

11. The tribunal found, on evidence, that the actual income of the deceased after deduction of income tax liability was Rs.7,05,136/-. It picked up the multiplier of 11. It was, however, right in declining the addition of future prospects in view of the dicta in *Sarla Verma & Ors. vs. DTC*, (2009) 6 SCC 121 keeping in view the age of the deceased.

12. The error on account of the personal and living expenses only needs to be rectified. On the net income of Rs.7,05,136/-, the loss of dependency thus works out to (Rs.7,05,136/- x 3/4 x 11) Rs.58,17,372/-, which is rounded off to Rs.58,18,000/-.

13. This court notices that the award under the non-pecuniary heads is also inadequate. Having regard to the date of the accident (27.12.2013) following the view taken by this court in MAC.APP.No.160/2015 *Shriram General Insurance Co Ltd v. Usha* decided by this court on 05.05.2016, the awards under the heads of loss of consortium and loss of love and affection are increased to Rs.1,50,000/- each and the awards under the head of loss of estate and funeral expenses are increased to Rs.50,000/- each.

14. Thus, the total compensation payable in the case works out to (Rs.58,18,000/- + 1,50,000/- + Rs.1,50,000/- + Rs.50,000/- + Rs.50,000/-) Rs.62,18,000/-. The award is enhanced accordingly. The interest, however, is reduced to 9% p.a. from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*].

15. The apportionment of the award as directed by the tribunal will hold good. The insurance company is directed to satisfy the award by appropriate deposits with the tribunal within 30 days. In case of default, the claimants will be entitled to take out appropriate execution proceedings.

16. This disposes of the appeals and the pending applications.

17. The statutory deposits, if made, shall be refunded after proof is furnished that the award has been satisfied.

R.K.GAUBA, J.

JULY 10, 2017

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