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

Decided on: 24th October, 2017

+ MAC.APP. 1034/2016 and CM 45291/2016 & 22943/2017

NATIONAL INSURANCE CO LTD Appellant

Through: Mr. Arihant Jain for Ms. Shantha
Devi Raman, Advocate

versus

INDER KUMAR JHA & ORS Respondents

Through: Mr. Navneet Goyal, Adv. for R-1
& 2

Mr. Prashant Kumar for Mr. M.M. Singh,
Adv. for R-3 & 4

+ MAC.APP. 571/2017

INDER KUMAR JHA & ANR Appellants

Through: Mr. Navneet Goyal, Advocate

versus

NATIONAL INSURANCE CO LTD & ORS Respondents

Through: Mr. Arihant Jain for Ms. Shantha
Devi Raman, Advocate for R-1

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Pinki Jha, an unmarried girl, aged 19 years, then pursuing the course leading to the degree of Bachelor of Dental Surgery (BDS) in the first year, suffered injuries in a motor vehicular accident that occurred on 28.10.2014 and died in the consequence. Her parents (appellants in MACA 571/2017) instituted accident claim case (suit no.5551/2016) on 23.01.2015 impleading National Insurance Company Ltd. (appellant in MACA 1034/2016) as one of the party respondents on the averments that the accident had occurred due to the negligent driving of a motor vehicle described as *Gramin Seva* bearing registration no.DL-2W-2194 (*Gramin Seva*) , its driver and owner also being added to the fray as respondents, they being respondents in these appeals. The case was contested with the driver and owner of the vehicle (*Gramin Seva*) denying that their vehicle was involved in any such accident.

2. On the basis of evidence led during inquiry, the Motor Accident Claims Tribunal (Tribunal), by its judgment dated 13.10.2016, however, upheld the case of the claimants (appellants in MACA 571/2017) holding the driver of the *Gramin Seva* to be responsible for negligent driving, causing fatal injuries to the victim / Pinki Jha. The tribunal awarded compensation in the sum of Rs.18,05,000/- it inclusive of Rs.16,80,000/- described as compensation on account of loss of estate, adding Rs.1,00,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses. The liability to pay was fastened against the insurer with interest at the rate of 9% p.a.

3. Both the insurer and the claimants are in appeal, the former questioning the finding returned about the involvement of the vehicle as also the computation of compensation and the latter seeking enhancement on the ground that the income of the deceased should have been assessed to the extent of Rs.25,000/-, placing reliance on the decision in *Ashvinbhai Jayantilal Modi Vs. Ramkaran Ramchandra Sharma and Anr.*, 2014 ACJ 2648.

4. Having heard the learned counsel on both sides and having perused the record of the inquiry before the tribunal, this court finds no substance in the appeal of the insurance company questioning the correctness of the finding on the issue of involvement of *Gramin Seva* or negligence on the part of its driver. It may be that Ashok Kumar (PW-2) was a witness whose presence at the scene was not immediately recorded in the police investigation. But then, the police was able to track him down as an eye witness and the investigation into the corresponding FIR has been completed with the aid and assistance of his evidence. The evidence clearly brings out the fact that the deceased while waiting for a cycle rickshaw on the roadside was hit by *Gramin Seva*, involvement of a vehicle of which nature was mentioned in the first very input received by the police immediately after the occurrence. No undue benefit can be allowed to be taken by the driver or the owner or for that matter the insurer of such vehicle only because the vehicle had fled away from the scene. The finding returned by the tribunal reached on the principle of preponderance of probabilities, thus, does not call for any interference.

5. The tribunal should have granted compensation under the head of loss of dependency rather than under the label of “loss of estate”. Be that as it may, it has indeed committed an error by deducting one-third on account of personal and living expenses from the notional income of the deceased. As is the normal rule, per the ruling in *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, in case of a bachelor, 50% should have been deducted. Since the claim was on account of death of a bachelor by the parents, the multiplier should have been chosen according to the age of the mother (38 years old) in which view the correct multiplier would be 15 rather than 14 as applied by the tribunal.

6. The crucial question, however, is as to whether the notional income of Rs.15,000/- p.m. adopted by the tribunal is correct or not. While the claimants rely on *Ashvinbhai Jayantilal Modi* (supra), reliance by the insurer is on another decision of the Supreme Court reported as *Radhakrishna and Anr. Vs. Gokul and Ors.*, (2013) 16 SCC 585, where following an earlier ruling of the Supreme Court in *Arvind Kumar Mishra Vs. New India Assurance Co. Ltd. & Anr.*, (2010) 10 SCC 254 in a case of death of a person of same age (19 years) also pursuing a professional degree course (engineering), the Supreme Court granted lumpsum compensation of Rs.7 Lakhs only.

7. It has to be borne in mind that the deceased was still a student. She had just joined the degree course leading to the qualification of BDS which, upon completion, would undoubtedly have opened for her avenues to earn decent livelihood. But then, such calculations are always based on some amount of speculation. The tribunal has noted

that the minimum wages payable to a graduate at the relevant point of time were in the sum of Rs.11,414/-. It assumed the income of Rs.15,000/- p.m. notionally. In the given facts and circumstances, where the deceased had just joined the course of BDS, the view taken by the tribunal cannot be faulted. However, the errors noted earlier need to be corrected and the deficiency in the awards under the other heads of damages i.e. – Rs.1,00,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses, needs to be suitably made good.

8. On the notional income of Rs.15,000/-, making a deduction of 50% towards personal and living expenses and applying the multiplier of 15, the loss of dependency is recomputed as $[Rs.15,000 / 2 \times 12 \times 15]$ Rs.13,50,000/- (Rupees Thirteen Lakh and fifty thousand only). Following the ruling of this court in *Shriram General Insurance Co Ltd v. Usha*, MAC.APP.No.160/2015, award of Rs.1,50,000/- towards loss of love and affection and Rs.50,000/- each towards loss of estate and funeral expenses are added.

9. Thus, the total compensation in the case comes to $[Rs.13,50,000/- + Rs.1,50,000/- + Rs.50,000/- + Rs.50,000/-]$ Rs.16,00,000/- (Rupees Sixteen Lakh only). The award is modified accordingly. It shall carry interest as levied by the tribunal.

10. By order dated 21.12.2016 in MACA 1034/2016, the insurance company had been directed to deposit the entire awarded amount with interest with the tribunal and by order dated 23.05.2017, 50% of such deposit was permitted to be released to the claimants. The tribunal shall now calculate the balance payable to the claimants in terms of

the modified award and release the same accordingly. The excess in deposit with statutory deposit made by the insurance company shall be refunded.

11. Both appeals and the pending applications are disposed of in above terms.

R.K.GAUBA, J.

OCTOBER 24, 2017

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