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

Decided on: 12th October, 2017

+ MAC APPEAL No. 1043/2016

NATIONAL INSURANCE CO. LTD. Appellant
Through: Mr. Abhishek Mishra, Adv.
versus

SONIA MITTAL & ORS. Respondents
Through: Mr. Nitin Yadav, Adv. for R1
to 3.
Mr. Pramod Pandey, Adv. for
R-4 & 5.

+ MAC APPEAL No. 1044/2016

NATIONAL INSURANCE CO. LTD. Appellant
Through: Mr. Abhishek Mishra, Adv.
versus

LRS OF SHANKAR MITTAL & ORS.
Respondent
Through: Mr. Nitin Yadav, Adv. for R1
to 3.
Mr. Pramod Pandey, Adv. for
R-4 & 5.

+ MAC APPEAL No. 1048/2016

NATIONAL INSURANCE CO. LTD. Appellant
Through: Mr. Abhishek Mishra, Adv.
versus

AMOGH MITTAL & ORS. Respondents
Through: Mr. Nitin Yadav, Adv. for R1
to 3.

Mr. Pramod Pandey, Adv. for
R-4 & 5.

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

JUDGMENT (ORAL)

1. On 17.02.2012, Shankar Mittal with his wife Sonia Mittal and minor son Amogh Mittal were going in a car bearing registration no. HR 72 0051 driven by the former. The car came to be involved in a motor vehicular accident in the area of police station Kapashera, New Delhi, it being on account of collision against motor vehicle described as Tanker bearing registration no. UP 53BT 7086. All the three persons in the car suffered injuries, Shankar Mittal dying in the consequence. Three accident claim cases came to be instituted, one (MACP 478/2014) seeking compensation on account of death of Shankar Mittal and the others (MACP No. 475 and 552/2014) on account of injuries suffered by Amogh Mittal and Sonia Mittal respectively. The cases resulted in inquiry and a common judgment dated 30.08.2016 whereby the Motor Accident Claims Tribunal held that the accident had occurred due to negligent driving of the tanker by Mithlesh Kumar Upadhyaya (respondent in these appeals) hereinafter referred to as “the driver of the offending vehicle”. The tanker was admittedly registered in the name of India tankers Pvt. Ltd. (another respondent in these appeals) hereinafter referred to as “the registered owner of the offending vehicle”, the appellant (insurer) admittedly being the insurance company which had issued an insurance policy

covering third party risk in respect of the tanker for the period in question.

2. During the course of inquiry, the insurer had raised the plea that the tanker was meant for carrying hazardous goods and, therefore, the driving licence of its driver should have necessary endorsement in terms of requirement of Section 14 (2) (a) of the Motor Vehicles Act, 1988 read with Rules 9 (d) and 132 of Central Motor Rules, 1989. The parties led evidence in the course of which it was proved that the driver of the offending vehicle was holding a valid and effective driving licence for heavy goods vehicle/heavy transport vehicle for the period in question and that he also possessed the training certificate (Ex.R2W1/5) for safe transportation of hazardous goods, it being valid for the period 13.01.2012 to 12.01.2013. The tribunal rejected the contention of the insurance company about the breach of terms and conditions of the insurance policy which was essentially based on the fact that there was no formal endorsement about such training or competence, in terms of the statutory requirements, on the driving licence of the driver of the offending vehicle.

3. In the case of claim arising out of death of Shankar Mittal, the tribunal awarded total compensation in the sum of Rs. 1,06,51,800/-, the said amount inclusive of Rs. 1,02,76,800/- calculated towards loss of dependency on the basis of conclusion reached that the deceased was earning Rs. 6,42,300/- per annum from his business in the name of Shankar Motors, reference in this context being made to the income-tax returns (ITRs) for the assessment years 2011-2012 and 2012-13, last of such ITRs reflecting such level of increase.

4. By the appeals at hand, the insurance company submits that the conclusion of the tribunal denying to it exoneration or recovery rights on the basis of breach of terms and conditions of the insurance policy is erroneous as the requirement of formal endorsement is requisite and could not have been given a go by. Reliance is placed on decision of this Court dated 18.01.2016 in MAC Appeal No. 798/2010 *New India Assurance Co. Ltd. vs. Ashpal & Ors.* and of learned Single Judge of the High Court of Allahbad (Lucknow Bench) dated 05.10.2016 in *FAFO Nos. 20-21/2016 Krishna Kumar & Ors. vs. United Insurance Company Ltd. & Ors.* In the case of award on account of death of Shankar Mittal, the calculation of loss of dependency on the basis of the last two ITRs for the assessment years 2011-12 and 2012-13 is also questioned, it being pointed out that these ITRs were filed post death of the person in question and that the tribunal has ignored the ITRs for the two immediately preceding years being for AY 2009-10 and 2010-11 respectively which would show the income from the business at a much lower level.

5. Having heard the learned counsel on both sides, this Court finds substance in the exception taken to the method of calculation of loss of dependency in the claim case on account of death of Shankar Mittal. The judgment of the tribunal, in fact, does not even refer to the fact that the claimants had also submitted in evidence, ITRs for 2009-10 and 2010-11 (Ex.PW-5/1 collectively), the only discussion by the tribunal on the subject being as under:-

“16. In Case bearing No. 478/14 titled as Sonia Mittal & Anrs. Vs. Mithlesh Kumar Upadhaya & Anrs., Ms.

Sonia Mittal has come in the witness box and stated that her husband Shanker Mittal was businessman and doing business in the name and style of M/s Shanker Motors and was earning more than Rs. 6,42,300/- per annum (Rs. Six lacs forty two thousand three hundred only) per month. PW-6 Ashok Kumar from Income Tax proved the ITR of the deceased for the year 2011-12 and 2012-13 wherein yearly income is mentioned as Rs. 6,42,300/- (Six Lacs forty two thousand three hundred only). There is no reason to doubt that the annual income of deceased which is supported by ITR of many years. Therefore, his annual income is taken as Rs. 6,42,300/- (Six lacs forty two thousand three hundred only).

6. The above approach was not correct. The tribunal did not even take note of the fact that the ITRs for 2011-12 and 2012-13 were filed after the death as was the import of the evidence brought out through documents (Ex.PW-6/1 collectively). It may be mentioned here that as per the ITR for AY 2009-10, corresponding to functional year 2008-2009 the total income reported by the deceased, was Rs. 1,97,671 and for the immediate next year i.e. A.Y. 2010-2011 which would correspond to financial year 2009-10, the income reported by the deceased was Rs. 2,58,712/-. Strangely in the ITRs for the two subsequent assessment years, submitted in his name, the claim was that he had earned Rs. 5,88,727/- and Rs. 6,42,300/- respectively. There is no co-relation between the income for the first two said financial years/assessment years with the income for the subsequent two years.

7. Against the above backdrop the counsel for the claimants now fairly concedes that the income declared in the subsequent two ITRs may be ignored since the same were submitted post the death and there is no other material available for the generation of such income to be substantiated or corroborated. He, however, submitted that the income declared for AY 2010-11 i.e. Rs. 2,58,712/- may be taken as the benchmark and that the element of future prospects may be factored in inasmuch as the ITR immediately preceding shows progressive rise in income. The counsel representing the insurance company also fairly agrees to such basis for calculation.

8. In the face of irrefutable evidence of progressive rise in income from AY 2009-10 to 2010-11, the element of future prospects to the extent of 50 % would have to be factored in [see judgment dated 28.03.2016 in MAC.APP. 548/2013 *United India Insurance Co. Ltd. v. Kamla & Ors.*]. The calculation of loss of dependency thus, is made, on the basis of income declared for AY 2010-2011 i.e. Rs. 2,58,712/-.

9. Shankar Mittal, the deceased was 34 years old when he died. Therefore, the multiplier of 16 was adopted by the tribunal. There are three members of the family who were dependents on him and, therefore, deduction on account of personal and living expenses to the extent of $\frac{1}{3}^{\text{rd}}$ is to be made. The loss of dependency, thus, is recomputed as $(258712 \times 150 \div 100 \times 2 \div 3 \times 16)$ Rs. 41,39,392/-, rounded off to Rs. 41,40,000/-.

10. It is noted that the dispensation under the non-pecuniary heads of damages granted by the tribunal is not in *sync* with similarly placed

cases of same vintage as per ruling in *Shriram General Insurance Co Ltd v. Usha*, MAC.APP.No.160/2015, decided on 05.05.2016. Therefore the said awards are also suitably modified. It is directed that the claimants will be entitled to Rs. 1,50,000/- each towards loss of love & affection and towards loss of consortium and Rs. 50,000/- each towards loss of estate and funeral expenses. This would result in total compensation in the sum of (41,40,000 + 1,50,000 + 1,50,000 + 50,000 + 50,000) Rs. 45,40,000/- (forty five lacs forty thousand only). The award is modified accordingly. The insurance company has also taken exception to the levy of interest to the awards in the three cases. Indeed, there is no special reason set out for levy of higher rate of interest. Following the consistent view taken by this Court, the rate of interest is modified to 9% (nine per cent) per annum 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.*]. The awards in the three cases are modified accordingly.

11. Coming to the defence taken by the insurance company vis-à-vis the driver and owner of the offending vehicle, what distinguishes the case at hand is that the driver of the offending vehicle had undergone the requisite training which had been duly certified. There is nothing on record to show that the insurance company raises questions about the validity of the training certificate. It is insisting merely on the fact that there was no endorsement secured from the transport authority in terms of the requirement under the rules. That, however, ought not cut any ice. What is the crucial requirement is the special training for driving a vehicle meant for transportation of

hazardous goods. That requirement had been fulfilled. Securing of endorsement in wake of such certification of the special skill was more of ministerial nature. The rule of main purpose would apply [see *National Insurance Company V. Swaran Singh* (2004) 3 SCC 297].

The plea of insurers for recovery rights is, therefore, rejected.

12. By similar orders passed on 07.12.2016, in each of these appeals, the insurance company had been directed to deposit 50% of the awarded amount (without interest) with the tribunal as a pre-condition to the stay against execution. The amount thus deposited was permitted to be released to the respective claimants in the injury cases and one-third of such deposit was released in the death case by separate orders passed on 20.03.2017. By subsequent orders passed on 02.05.2017 in each of these appeals, the insurance company was also directed to deposit the interest component on the already deposited 50% of the awarded amount as well. The tribunal shall now calculate the amounts payable to the respective claimants in the appeals and release the balance from out of the deposit made, refunding the excess, if any, to the insurance company. Conversely, if any, amount is found to be deficient it shall be deposited with corresponding upto date interest with the tribunal within thirty days for it to be released to the claimants in terms of the awards modified as above.

13. The appeals are disposed of in above terms.

R.K.GAUBA, J.

OCTOBER 12, 2017/nk