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

Decided on: 28th July, 2017

\+ MAC.APP. 658/2017 and CM 26635-26636/2017

SBI GENERAL INSURANCE CO LTD ..... Appellant
Through: Mr. Sameer Nandwani, Advocate

versus

GEETU & ORS ..... Respondents
Through

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

JUDGMENT (ORAL)

1. The accident claim case (MACP) 104/15 instituted by the first to fourth respondents herein (the claimants) related to the death of Constable Yogesh Kumar, a member of Delhi traffic police in a motor vehicular accident that occurred on 10.04.2015 at about 1.15 p.m. at a traffic police check point near underpass on National Highway 8, Rajokri opposite City Park Hotel, Rajokri, New Delhi in which he was crushed to death by a truck bearing no.HR-38T-2946 which was admittedly insured against third party risk for the period in question with the appellant insurance company (insurer).

2. The Tribunal, after inquiry, on the basis of evidence led, accepted the case of the claimants about the death having been caused

due to negligence on the part of the truck driver and, by judgment dated 01.05.2017, awarded compensation in the sum of Rs.54,44,140/- with interest at the rate of 9% p.a. fastening the liability on the appellant, there being no plea of breach of terms and conditions of the insurance policy.

3. The insurer, by the appeal at hand, seeks to question the said judgment of the Tribunal on the ground that the evidence showed that the deceased himself was negligent as he had come in the path of the truck which was moving in exercise of its right of way. It is also the contention of the insurer that the tribunal failed to deduct the benefit of *ex gratia* payment that was received by the widow and also the benefit arising out of she being appointed in Delhi police on compassionate grounds in lieu of the position held by her husband.

4. The Tribunal has discussed the evidence of Constable Ashok Kumar (PW-2) in the impugned judgment concerning the sequence of events leading to the accident. It is clear from the said evidence that the deceased was deployed on traffic check duty at the place in question in the company of other officials of the traffic police. They were trying to intercept a truck which was moving on the road but it would not stop and when the deceased was about to return to the road side he was hit by the truck in question. In these facts and circumstances where the driver of the truck in question did not enter the witness box, there being no explanation from his side as to why he could not stop in spite of noticing the traffic police on check duty, the negligence on his part is writ large. The deceased was doing his duty as a public servant and it is not fair to read into it the element of

contributory negligence.

5. The other contentions have been duly considered by the Tribunal with reference to the decisions of the Supreme Court in *Vimal Kanwar and Ors., Vs. Kishore Dan & Ors.*, *(2013) 7 SCC 476* such benefits not being in the nature of pecuniary advantage liable to be deducted. The view taken by the Tribunal is in accord with the view expressed by this court in *Oriental Insurance Company Ltd. Vs. Sukhpal Singh and Anr. MACA 478/2015*, decided on 27.07.2017.

6. The appeal, thus, is devoid of merits and is dismissed *in limine*. The pending applications also stand dismissed.

7. The insurance company must satisfy the award within four weeks by requisite deposit with the tribunal.

8. The statutory amount shall be refunded after the award is satisfied.

R.K.GAUBA, J.

JULY 28, 2017
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