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

Decided on: 10th August, 2017

\+ MAC APPEAL 610/2015

RELIANCE GENERAL INSURANCE CO. LTD...... Appellant
Through: Mr. A.K. Soni, Adv.

versus

KIRAN SHARMA & ORS. ..... Respondents
Through: Mr. V.P. Singh, Adv. for R-1 & 2.

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

JUDGMENT (ORAL)

1. Sonia Sharma, aged 25 years, a bachelor, died due to injuries suffered in motor vehicular accident that took place on 12.01.2012 due to negligent driving of truck bearing no. MH 26B 4513, admittedly insured against third party risk with the appellant insurance company. Her parents and sibling (first to third respondents herein) instituted accident claim case (case no. 61/2014) seeking compensation on the averments that the fatal accident took place due to negligence on the part of the truck driver who along with owner of the truck were also impleaded as parties. The tribunal, after inquiry, by judgment dated 01.05.2015, accepted the said case on the principle of fault liability and awarded compensation in the sum of Rs. 12,51,996/- inclusive of

Rs. 11,91,996/- towards loss of dependency besides Rs. 25,000/- each towards loss of love & affection and towards funeral expenses and Rs. 10,000/- towards loss of estate. The insurance company was held liable to pay interest @ 9% (nine per cent) per annum. The insurer in appeal questions the calculation of loss of dependency pointing out two errors; one, that the element of future prospects was added over and above the notional income assessed with the help of minimum wages, there being no proof of actual earnings and, the other, that the multiplier (18) has been taken on the basis of age of the deceased rather than the age of the claimant parents.

2. It is noted that the claimants had pleaded that the deceased was employed as a performer by Natraj Restaurant & Bar in Mumbai at a salary of Rs. 25,000/- per month. But the tribunal was not satisfied with the proof adduced in such regard through Mr.Girish Salian (PW-2) who had testified on the basis of salary certificate (Ex.PW-1/9). The reasons set out by the tribunal in rejecting the said evidence are sound and do not call for any interference. PW-2 had admitted during cross-examination that he had no records whatsoever to corroborate the claim that the deceased was an employee engaged for any services by the establishment wherein he initially claimed to be the owner and later described himself as the partner. No books of accounts were produced. There is no appointment letter. The establishment also does not have any registration with any government agency. In these facts and circumstances, the tribunal rightly relied on the minimum wages (Rs. 7,358) payable to a non-matriculate during the relevant period, in

the absence of any other evidence meriting any higher wages to be assumed.

3. Against the factual matrix noted above, there being no clear proof of avocation or regular earnings of the deceased, leave alone progressive rise in income, the element of future prospects could not have been factored in.

4. It is well settled that in cases of claim for compensation on account of death in a motor vehicular accident, the multiplier method is the most appropriate to compute the loss of dependency and for such purposes, "the age of the deceased or that of the claimants whichever is higher" regulates the choice of multiplier [*G.M. Kerela SRTC vs Susamma Thomas* (1994) 2 SCC 176 and *U.P.S.R.T.C. vs Trilok Chandra* (1996) 4 SCC 362 and the decision of this court in *National Insurance Company Limited vs. Mohammed Siddique & Ors.,* MAC APP.431/2016 dated 18th July, 2017]

5. The learned counsel for the claimants submits that the mother on the date of accident was 41 years old. In this view, the multiplier of 14 should have been adopted. Thus, the loss of dependency is re-calculated as [(7358 ÷ 2) x 12 x 14)] Rs. 6,18,072/- rounded off to Rs. 6,19,000/-.

6. It is noted that the non-pecuniary heads of damages are deficient. Having regard to the dispensation by this Court in MAC.APP.No.160/2015 *Shriram General Insurance Co Ltd v. Usha* decided by this court on 05.05.2016, award of Rs. 1,50,000/- towards loss of love & affection, Rs. 50,000/- each towards loss of estate and funeral expenses are added.

7. Thus, the total compensation comes to (6,19,000/- + 1,50,000 + 50,000 + 50,000) Rs. 8,69,000/-. The award is modified accordingly. It shall carry interest as levied by the tribunal.

8. By order dated 03.08.2015, the insurance company had been directed to deposit the entire awarded amount with interest within the period specified and out of such deposit fifty per cent (50%) was allowed to be released, the balance kept in fixed deposit with UCO Bank, Delhi High Court Branch, Delhi. The registry shall calculate the balance payable to the claimants in terms of the modification, as above, refunding the excess deposit with statutory deposit to the insurance company.

R.K.GAUBA, J.

AUGUST 10, 2017
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