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

Decided on: 25th October, 2017

+ MAC.APP. 184/2017 and CM 7701/2017

TATA AIG GENERAL INSURANCE CO. LTD Appellant

Through: Mr. Priyadarsi Acharya, Advocate

versus

NINDER KAUR & ORS

..... Respondents

Through: None

+ MAC.APP. 824/2017

NINDER KAUR & ORS

..... Appellants

Through: None

versus

TATA AIG GEN INS. CO. LTD & ORS Respondents

Through: Mr. Priyadarsi Acharya, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Ranjeet Singh, a bachelor, then aged 25 years, died due to the injuries suffered in a motor vehicular accident that took place on 24.09.2012 due to the negligent driving of a motor vehicle described as a truck bearing registration no.HR-63B-2895, admittedly insured against third party risk with Tata AIG General Insurance company

Ltd. (insurer). On the accident claim case (old suit no.777/2012, new MACT case no.476944/16) instituted on 31.10.2012 by the first to third respondent in MACA 184/2017 (collectively, the claimants), the Motor Accident Claims Tribunal (Tribunal), after inquiry, by judgment dated 26.12.2016, awarded compensation in the total sum of Rs.35,36,880/- and directed the insurance company to pay with interest at 9% p.a..

2. The insurer is in appeal reiterating its plea that there was no involvement of the insured vehicle and that the eye witness Manjeet Singh (PW-3) was a planted witness. It also questions the computation of compensation under the head of loss of dependency.

3. Having heard the learned counsel on both sides and having perused the record, this court does not find any merit in the first contention. PW-3 has categorically deposed about the sequence of events leading to the occurrence. In fact, he was travelling with the deceased on the motorcycle when the collision took place. None of the respondents in the claim case including the appellant herein examined the driver of the insured vehicle to prove facts to the contrary. The evidence of PW-3 is substantiated by the evidence gathered during investigation in the corresponding FIR. In these circumstances, the plea is rejected.

4. The tribunal accepted the evidence of Abhay Kumar Singh (PW-2) who proved that the deceased was in regular and permanent employment with M/s. Sincere Marketing Services Pvt. Ltd., an authorised dealer of Eicher Group of Companies, the capacity in which he was engaged being that of a supervisor. He proved that the

deceased had been initially employed at a salary of Rs.7,500/- p.m. with effect from 01.09.2010, the emoluments having been raised over the period at least three times. The salary record proved by the said witness (Ex. PW2/1 collectively) would show that in the month of August 2012, he was in receipt of gross emoluments of Rs.22,100/-. The contention of the claimants in their cross appeal (MACA 824/2017) is correct to the effect that the tribunal fell into error by keeping out the payments received in the name of incentive and conveyance allowance. From the terms and conditions of engagement of the deceased with the said entity, it is clear that both the said emoluments were part of the regular income of the deceased. In fact, the conveyance allowance would result in corresponding savings for the family and, therefore, cannot be kept out. In these circumstances, the loss of dependency will have to be calculated on the income of Rs.22,100/- p.m.

5. The tribunal correctly added the element of future prospects of increase in income to the extent of 50% keeping in view the facts that the employment was regular and permanent and there is irrefutable evidence qua progressive rise in income therein. [see judgment dated 28.03.2016 in MAC.APP. 548/2013 *United India Insurance Co. Ltd. v. Kamla & Ors.*]. The notional income for calculating the loss of dependency, thus, is computed as [Rs.22,100 x 150/100] Rs.33,150/-.

6. The submission of the insurance company about the error in deduction on account of personal and living expenses to the extent of one-third is correct. Since it is a case primarily on account of loss of dependency of the mother in a case of bachelor's death, 50% would

have to be deducted on such count. Therefore, the monthly loss of dependency is calcuted as [Rs.33,150/2] Rs.16,575/-.

7. The tribunal adopted the multiplier of 18 having regard to the age of the deceased. This court in judgment dated 24.08.2017 in *MACA 467/2016, Reliance General Insurance Co. Ltd. Vs. Gomti & Ors.* has ruled thus :-

“6. The question as to the choice of multiplier in cases of deaths of bachelors, had come up before this Court in MAC appeal No. 431/2016 National Insurance Co. Ltd. vs. Mohd. Siddique & Ors. decided on 18th July, 2017, where it was urged on behalf of the insurance company that the law laid down by the Supreme Court in cases of General Manager, Kerala State Road Transport Corporation vs. Susamma Thomas & Ors., (1994) 2 SCC 176 and U.P. State Road Transport Corporation and Ors. vs. Trilok Chandra and Ors., (1996) 4 SCC 362 continues to prevail as the binding precedent. This Court, after examining the issue in light of the decisions in aforementioned cases and in the cases of Reshma Kumari vs. Madan Mohan (2013) 9 SCC 65 and noting the dicta in Central Board of Dawoodi Bohra Community & Anr. v. State of Maharashtra & Anr., (2005) 2 SCC 67; Safiya Bee v. Mohd. Vajahath Hussain @ Fasi, (2011) 2 SCC 94 and Union of India & Ors. v. S.K. Kapoor, (2011) 4 SCC 589, held as under:-

“16. Since the decision in Trilok Chandra and Ors., (supra) by a bench of three Hon’ble Judges is prior in time in relation to the decisions in Reshma Kumari (supra) and Munna Lal Jain (supra), it is the statement of law on choice of multiplier in the former which is to be taken as the binding precedent. Thus, this court will follow the dictum in the said judgment and adopt the multiplier

according to the age of the deceased or that of the claimants, whichever is higher”.

7. The tribunal has noted, that the claimant mother was 62 years old on the relevant date. Her age naturally being higher the multiplier of 7 would apply, as per the dispensation in Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121.”

6. The multiplier has to be chosen according to the age of the mother (53 years). Since she was the prime dependent, the other claimants being unmarried sisters, the multiplier of 11 would apply.

7. In the above facts and circumstances, the loss of dependency is recomputed as [Rs.16,575/- x 12 x 11] Rs.21,87,900/-, rounded off to Rs.21,88,000/- (Rupees Twenty one Lakh eighty eight thousand only).

8. It is noted that the tribunal awarded Rs.1,00,000/- towards loss of love and affection and Rs.25,000/- each on account of funeral charges and loss to estate. Following the ruling in *Shriram General Insurance Co Ltd v. Usha*, MAC.APP.No.160/2015, decided on 05.05.2016, the said awards are increased to Rs.1,50,000/-, Rs.50,000/- and Rs.50,000/- respectively.

9. Thus computed, the total compensation in the case comes to [Rs.21,88,000/- + Rs.1,50,000/- + Rs.50,000/- + Rs.50,000/-] Rs.24,38,000/- (Rupees Twenty four lakh and thirty eight thousand only). The award is modified accordingly. It shall carry interest as levied by the tribunal.

10. By order dated 27.02.2017 in MACA 184/2017, the insurance company had been directed to deposit the entire awarded amount with interest with the tribunal as a pre-condition to the stay against

execution. By order dated 24.05.2017, Rs.10,64,880/- treated as “undisputed amount” was released to the claimants. The tribunal appears not to have made any apportionment of the compensation amongst the three claimants. Having regard to the relationship of the claimants with the deceased, it is directed that the second and third respondents would receive 10% (ten percent) each of the awarded compensation, the entire balance going to the mother (i.e. the first respondent) Ninder Kaur only. The tribunal shall calculate the balance amount payable to the claimants in terms of these directions and release the amounts accordingly refunding the excess in deposit to the insurance company.

11. The statutory amount deposited by the insurer shall be refunded.

12. Both appeals and the pending application are disposed of in above terms.

OCTOBER 25, 2017

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R.K.GAUBA, J.