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

Decided on: 27th July, 2017

+ MAC.APP. 726/2015 and CM 20235/2015

M/S IFFCO TOKIO GENERAL INSURANCE
CO LTD

..... Appellant

Through: Mr. Harsh Vardhan, Advocate

versus

SUSHILA YADAV & ORS

..... Respondents

Through: Mr. Partap Singh, Advocate

+ MAC.APP. 66/2016 and CM Nos.2558/2016 and 2559/2016

SUSHILA YADAV & ORS

..... Appellants

Through: Mr. Partap Singh, Advocate

versus

CHETAN PARKASH KAUSHIK & ORS

..... Respondents

Through: Mr. Harsh Vardhan, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Sube Singh was employed in Delhi Police, then in the rank of Head Constable. He was moving on his motor cycle bearing no.DL-4SBJ-0705 (the motor cycle) on 17.01.2013 upwards the Moti Bagh Flyover, having come from the side of Ring Road. It was around

11.40 a.m. when his motor cycle came to be involved in a motor vehicular accident resulting in his death. The local police registered FIR 16/13 in police station R.K. Puram for offences under Section 279, 338 and 304A IPC. In the course of the said investigation, evidence was collected to the effect that the accident had been caused by a car bearing registration no.HR-55R-4004 registered in the name of Bimla Devi (seventh respondent in MACA 726/2015) and that it was driven by Chetan Parkash Kaushik, the husband of the second respondent, he being the father of third to fifth respondents and son of the sixth respondent (collectively, the legal heirs of Chetan Parkash Kaushik).

2. The widow and children of the deceased, they being seventh to ninth respondents in MACA 726/2015 (hereinafter referred to as “the claimants”), they also having filed MACA 66/2016, instituted accident claim case (suit no.201/14) on the contention that the accident had been caused due to the negligent driving of the car by the said Chetan Parkash Kaushik. The claimants had also impleaded Iffco Tokio General Insurance Co. Ltd., the appellant in MACA 726/15, also a respondent in connected MACA 66/2016, because it had concededly issued an insurance policy covering third party risk in respect of the car.

3. The claim case was contested by the registered owner of the car, and Chetan Parkash Kaushik, by their written statement pleading that there was no involvement of the car in the accident.

4. The Motor Accident Claims Tribunal (Tribunal), after inquiry, by judgment dated 23.05.2015, upheld the case of the claimants about

death having occurred due to rash driving of the car, this on the basis of evidence of Sarvan Kumar (PW-2), presented as an eye witness, he being a LIC agent who was statedly moving on the same road at the same point of time and having seen the accident per chance, he also having been examined as a witness in the corresponding police case. The Tribunal awarded compensation in the total sum of Rs.35,79,000/- with interest at the rate of 9%, this inclusive of the loss of dependency calculated as Rs.33,44,000/- with awards of Rs.1 Lakh each towards loss of love and affection and loss of consortium and Rs.10,000/- towards loss of estate and Rs.25,000/- towards funeral expenses.

5. The insurer, on which the liability has been fastened, presses its appeal (MACA 726/15) on the contention that the evidence of PW-2 and the contention of the claimants about involvement of the car should not have been believed since the witness could not have conceivably been present or seen the accident and that the story has been created falsely. The insurer also questions the computation of the award on the ground that the element of future prospects could not have been added.

6. *Per contra*, the claimants, by their appeal (MACA 66/2016), contend that the tribunal has correctly appreciated the evidence about the involvement and negligence of the car driver and, therefore, plead that this court should not interfere in the same. It is also submitted that the tribunal did not compute the loss of dependency properly as certain allowances were unjustly kept out. It is further the grievance of the claimant that the non-pecuniary damages as awarded are inadequate.

7. Having heard both sides at length and having gone through the Tribunal's record, this court is of the view that the evidence of PW-2 has been properly appreciated and accepted for just and sufficient reasons. It may be that PW-2 had not been examined by the police immediately after the occurrence. It does appear that he approached the police after some time gap. But then this by itself should not mean that he is to be disbelieved. It only means that his evidence is required to be subjected to a little closer scrutiny. The witness stood the test of cross-examination. It is pertinent to note here that inspite of opportunity, Chetan Parksh Kaushik did not enter the witness box. It does appear that he died midway the inquiry before the tribunal on 30.10.2014. But, by that time the claimants had already concluded their evidence and the case had reached the stage of respondent's evidence. There was no endeavour on the part of any of the contesting respondents to examine Chetan Parkash Kaushik as a witness. The reluctance on his part to enter the witness box, and his refusal to join test identification parade during police investigation as is mentioned in the chargesheet, copy of which has been submitted, are sufficient reasons why the defence theory must be rejected.

8. Therefore, this court declines to interfere in the finding about the involvement or negligence on the part of the driver of the car.

9. The counsel for the claimants pointed out that though the tribunal had taken into account the benefit of Modified Assured Career Progression Scheme (MACP) and had concluded (in para 38 of the impugned judgment) that the monthly income was about Rs.42,000/-, it excluded certain permanent allowances without any justification.

10. This court accepts the said contention. The allowances in the nature of transport allowance, washing allowance, metropolitan allowance, ration money and conveyance allowances were regular and to the benefit of his family. They would result in corresponding savings and, thus, the denial would be a net loss. Therefore, the loss of dependency has to be reworked on the basis of conclusion that the last income drawn was Rs.42,000/-.

11. The deceased was 53 years old when the death occurred. The Tribunal correctly applied the multiplier of 11. Having regard to the age and following view taken in *United India Insurance Co. Ltd. Vs. Kamla & Ors.*, MACA 548/2013, decided on 28.03.2016, the future prospects of increase to the extent of 15% will have to be factored in. Thus, the notional income would be (Rs.42,000/- x 115/100) Rs.48,300/-. This would mean the annual income would be (Rs.48,300/- x 12) Rs.5,79,600/-. Having regard to the prevailing rates of tax during the relevant period, the income tax liability would be Rs.30,000/-. This means the net income was Rs.5,49,600/-. Since there were three dependents, one-third is deducted and the annual dependency loss comes to (Rs.5,49,600/- x 2/3) Rs.3,66,400/-. On the multiplier of 11, the total loss of dependency is computed as (Rs.3,66,400/- x 11) Rs.40,30,400/- rounded off to Rs.40,31,000/-.

12. The death had occurred in January 2013. Following the view taken in *Shriram General Insurance Company Ltd. Vs. Usha & Ors.*, MACA 160/2015 decided on 05.05.2016, non-pecuniary damages in the sum of Rs.1,50,000/- each towards loss of love and affection and loss of consortium and Rs.50,000/- each towards loss of estate and

funeral expenses are added. Thus, the total compensation is computed as (Rs.40,31,000/- + Rs.1,50,000/- + Rs.1,50,000/- + Rs.50,000/- + Rs.50,000/-) Rs.44,31,000/-. The award is modified accordingly. Needless to add, it shall carry interest as levied by the Tribunal.

13. The insurer had been directed by order dated 30.09.2015 in MACA 726/2015 to deposit the entire awarded amount with the Registrar General within the period specified. Since the award has been increased, the amount deposited shall be released to the claimants forthwith. The insurance company is directed to satisfy the enhanced portion of the award by requisite deposit with the Tribunal within 30 days from today making it available to be released to the claimants.

14. The statutory deposit made by the insurer shall be refunded after the award has been fully satisfied.

15. The appeals and the pending applications are disposed of in above terms.

R.K.GAUBA, J.

JULY 27, 2017

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