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

Date of Decision: September 18, 2018

\+ **<u>MAC.APP. 1122/2014</u>**

BHARTI AXA GENERAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. Navneet Kumar & Mr. Vikas Bhadana, Advocates

Versus

GEETA DEVI & ORS. .....Respondents

Through: Mr. S.K. Tanwar, Mr. Sunil Sehgal & Mr. Manoj Bhandari, Advocates

\+ **<u>MAC.APP. 765/2016</u>**

GEETA DEVI & ORS. .....Appellants

Through: Mr. S.K. Tanwar, Mr. Sunil Sehgal & Mr. Manoj Bhandari, Advocates

Versus

BHARTI AXA GENERAL INSURANCE CO. LTD. & ORS. ..... Respondents

Through: Mr. Navneet Kumar & Mr. Vikas Bhadana, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

<u>JUDGMENT</u>
(ORAL)

1. The above captioned two appeals are directed against Award of 20th September, 2014 vide which compensation of ₹20,86,000/- with interest @ 9% per annum has been awarded to Claimants.

2. In the above captioned first appeal, appellant- *Bharti AXA General Insurance Company Limited (henceforth referred to as the "Insurer")* seeks exoneration from paying the awarded compensation, whereas in the above captioned second appeal, the challenge is to the finding of contributory negligence returned by the Tribunal.

3. Since these two appeals arise out of common Award of 20th September, 2014, therefore, both these appeals have been heard together and are being decided by this common judgment. The facts as noted in the impugned Award are as under:-

> *"It is the case of petitioners that on 14.12.2012, the deceased Shri Bhagwan was travelling on his motorcycle bearing No.A/F and was going to police office at Palwal Haryana for official purpose. At about 9 a.m. when the deceased reached Aligarh to Palwal road near Sehol Chowk one car being driven in rash and negligent manner hit the motorcycle of the deceased head to head and ran away. The deceased Shri Bhagwan got unconscious. In the meantime police reached at the spot and took the deceased Shri Bhagwan to the Government Hospital, Palwal, Haryana, where the doctor declared him brought dead. In the meantime, on the DD call an FIR No. 286/12 dated 14.12.2012 at PS Chand Hut, Haryana, was lodged. The post mortem on the body of late Shri Bhagwan was conducted vide post mortem report dated 14.12.2012 in which the doctor opined the cause of death as shock and hemorrhage due to ante mortem head injury which was sufficient to cause death in normal course of nature. It is stated that on 14.02.2013 one Shri Suresh Kumar S/o Shri Surjan Singh Yadav R/o 414 Rajokri Village, New Delhi -38 appeared*

at the police station and informed that on 14.12.2012 his driver namely Vinod Kumar was driving his Santro Car and while going from Aligarh to Delhi, had hit one motor cycle on the way near Sehol Chowk and being scared of the same he ran away from the place of the accident. It is averred that the deceased died on account of the accident which occurred solely on account of negligence of the respondent No.1 in the ordinary course of employment of respondent No.2. Respondent No.3 is the insurance company with whom the Hyundai Santro car was insured and as such they all are jointly and severally liable for the act of the respondent No.1."

4. The Motor Accident Claims Tribunal *(hereinafter referred to as 'the Tribunal')* has relied upon the evidence of *Geeta,* wife of *Shri Bhagwan*, who had died in a vehicular accident on 14th December, 2012. *Shri Bhagwan (hereinafter referred to as 'deceased')* was aged 38 years on the day of this vehicular accident and as per the evidence of *Geeta (PW-1)*, the deceased, was working as Constable in Haryana Police and was earning ₹22,588/- per month. The Tribunal has calculated the loss of dependency by adding 50% towards *"future prospects"* and since deceased was married, one-third has been deducted towards the personal expenses of the deceased and by applying the multiplier of 15, the *"loss of dependency"* has been assessed at ₹19,16,000/-. Compensation of ₹1,00,000/- has been awarded under the head of '*Love and Affection*' and '*Funeral Expenses*' of ₹10,000/- have been granted by the Tribunal. Under the head '*Loss of Estate*' ₹10,000/- has been granted and compensation of ₹50,000/- has been awarded under the head *"loss of consortium"*. The break-up of compensation awarded by the Tribunal is

as under:-

1)	Loss of Dependency	:	₹19,16,000/-
2)	Love and Affection	:	₹1,00,000/-
3)	Loss of Consortium	:	₹50,000/-
4)	Loss of Estate	:	₹10,000/-
5)	Funeral Expenses	:	₹10,000/-
	Total	:	₹20,86,000/-

5. The challenge to the impugned award by learned counsel for Insurer is on the ground that the insured car was not involved in this accident, as FIR was registered against an unknown vehicle. It is next submitted by counsel for Insurer that the negligence of driver of the insured car does not stand proved and so, the Insurer has no liability to pay the awarded compensation. Lastly, it is submitted by counsel for Insurer that as per *Haryana Compassionate Assistance to the Dependants of Deceased Government Employees Rules, 2006*, *ex gratia* amount equal to the pay and other allowances last drawn by deceased-employee, is being received by wife of deceased and so, there was no *"loss of dependency"*. Reliance is placed upon this Court's decision of 29th February, 2016, in MAC.APP. 165/2013, titled as *New India Assurance Co. Ltd. Vs. Devki & Ors.* Hence, dismissal of the claim petition is sought by Insurer.

6. On the contrary, counsel for Claimants submits that the challenge is to the finding of contributory negligence returned by the Tribunal. It is submitted on behalf of Claimants that there was no contributory negligence and so, deduction of 50% of the awarded compensation

deserves to be set aside and the entire awarded amount ought to be released to Claimants. Reliance is placed upon Supreme Court's decision in *Reliance General Insurance Co. Ltd. Vs. Shashi Sharma & Ors.* (2016) 9 SCC 627 and Punjab and Haryana High Court's decision of 15th January, 2018 in FAO No.2457/2013, titled as *Reliance General Insurance Co. Ltd. Vs. Geeta Devi* and the decision of 13th November, 2017 in FAO No. 3439/2012, titled as *Kamla & Ors. Vs. Krishna Tupe & Anr.'* and decision of 13th December, 2017 in FAO No. 5919/2010 titled as *Salochna Devi & Ors. Vs. Ashwani Kumar & Ors.* and upon decision in FAO No. 4983/2010, titled as *National Insurance Company Ltd. Vs. Salochna Devi & Ors.* in support of above submissions.

7. Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that the accident in question had taken place on a highway from *Aligarh* to *Palwal* and the time of accident was 09:00 a.m. in the month of December. Judicial notice can be taken of the fact that there is fog on the highway in the morning hours in the month of December. It is so said because the driver of the insured car in question, in the reply filed to the claim petition, has taken the stand that the accident in question had taken place due to fog. It is a case of head on collision. The negligence was of motorcycle rider and the driver of insured car, as they had not put on the blinkers while driving. When there is fog, the minimum precaution which is required to be taken, is to switch on the blinkers to avoid accident. In the considered opinion of this Court, the Tribunal has rightly concluded that the accident had occurred due to contributory negligence. There is no basis to conclude that there was no

negligence of the driver of insured car. Reliance placed upon decision in *Devki (Supra)* is of no consequence, as the said decision is distinguishable on facts. In the face of reply of driver of insured car, it cannot be said that the insured car was not responsible in causing the accident in question. Driver of insured car and the deceased were equally negligent.

8. On the dependency aspect, I find that in view of Supreme Court's decision in *Shashi Sharma (Supra)*, it cannot be said that there was no dependency of the legal heirs upon the deceased. Supreme Court in *Shashi Sharma (Supra)* has pertinently declared that the harmonious approach for determining a just compensation payable under the *Motor Vehicles Act, 1988*, is to exclude the amount received or receivable by the dependants of the deceased government employee under the aforesaid Rules of 2006 towards the head financial assistance equivalent to "pay and other allowances" that was last drawn by the deceased government employee in the normal course. It is clarified in the aforesaid decision that other benefits extended to the dependants of the deceased government employee in terms of Sub-Rule (2) to Sub-Rule (5) of Rule 5, including family pension, life insurance, provident fund, etc. must remain unaffected and cannot be allowed to be deducted, which any way would be paid to the dependants of the deceased government employee, applying the principle expounded in *Helen C. Rebello Vs. Maharashtra SRTC* (1999) 1 SCC 90. Applying the aforesaid ratio to the facts of the instant case, I find that *"loss of dependency"* has to be reassessed after considering the *ex gratia* amount being received by the legal heirs of the

deceased.

9. As per evidence of ASI Satish Kumar *(PW-2)*, the concerned official from the department of deceased's employer, monthly financial assistance ₹23,700/- per month is being received by the family of deceased as per *Haryana Compassionate Assistance to the Dependants of Deceased Government Employees Rules, 2006* and the last drawn salary of deceased was ₹22,588/- per month. The amount received *ex gratia* cannot be paid second time to the Claimants. It is a matter of fact that the financial assistance being received by legal heirs of deceased is higher than the last salary drawn by the deceased.

10. Since *the Motor Vehicles Act, 1988* is a social legislation, therefore, it is deemed appropriate to take *ex gratia* amount of ₹23,700/- per month as the basis to assess the *"loss of dependency"* and after making addition of 50% towards *"future prospects"* and deducting 1/3rd towards his *"personal expenses"* and applying multiplier of 15, the *"loss of dependency"* to legal heirs of deceased is reassessed as under:-

₹23,700/- X 12 X 150/100 X 2/3 X 15 = ₹42,66,000/-

Due to contributory negligence of deceased, 50% has to be deducted out of the awarded compensation, and so the *"loss of dependency"* to legal heirs of deceased is ₹21,33,000/-.

11. The compensation granted by Tribunal under the non-pecuniary heads needs to be brought in tune with Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680. Accordingly, compensation granted by the Tribunal under head of '*loss of Love and Affection*' is disallowed. The

compensation granted under the head *'loss of estate'* is enhanced from ₹10,000/- to ₹15,000/-. Similarly, *'funeral expenses'* are also increased from ₹10,000/- to ₹15,000/-. However, compensation granted under the head *'loss of consortium'* is reduced from ₹50,000/- to ₹40,000/-. Accordingly, the compensation payable to legal heirs of deceased is re-assessed as under:-

1)	Loss of Dependency	:	₹21,33,000/-
2)	Loss of Consortium	:	₹40,000/-
4)	Loss of Estate	:	₹15,000/-
5)	Funeral Expenses	:	₹15,000/-
	Total	:	₹22,03,000/-

12. In light of the aforesaid, compensation of ₹20,86,000/- granted by the Tribunal, is enhanced to ₹22,03,000/-, which shall carry interest @ 9% per annum. The enhanced compensation alongwith interest be deposited by the Insurer within six weeks with the Registrar General of this Court and thereafter, it be disbursed to legal heirs of deceased in the manner indicated in the impugned Award. Statutory deposit, if any, be released to the Insurer as per rules.

13. With aforesaid modification in the impugned Award, the above captioned two appeals are disposed of.

(SUNIL GAUR)
JUDGE

SEPTEMBER 18, 2018
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