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

% **Date of Decision: 26th April, 2018**

\+ **MAC.APP. 77/2017 & CM APPL. 2316/2017**

ASHOK KUMAR GULATI ..... Appellant

Through: Mr. S. K. Vashistha along with Mr.Kartikay Sharma, Advs.

versus

REETA & ORS ..... Respondents

Through: Mr. S. N. Parashar, Adv. Mr. Sandeep Jha, Adv for R-4.

\+ **MAC.APP. 683/2017**

REETA & ANR ..... Appellants

Through: Mr. S. N. Parashar, Adv.

versus

MANOJ KUMAR & ORS (ICICI LOMBARD GENERAL INS. CO LTD) ..... Respondents

Through: Mr. Sandeep Jha, Adv for R-3.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The accident dated 01st December, 2014 resulted in the death of Anjani Kumar. The deceased aged about 22 years at the time of accident and was survived by his mother and sister who claimed compensation before the

Claims Tribunal. The Claims Tribunal awarded compensation of Rs. 16,35,000/- to the claimants. The Claims Tribunal granted recovery rights to the Insurance Company to recover the award amount from the owner of the offending vehicle. The owner has filed MAC. APP. 77/2017 to challenge the recovery rights whereas the claimants are seeking enhancement of the compensations amount in MAC APP.683/2017.

2. Anjani Kumar was aged about 22 years at the time of accident and he was working as process executive with M/s Cognizant Technology Solutions India Pvt. Ltd. earning of Rs.1,60,008/- per annum after completing BCA from Bangalore University. The occupation and income of the deceased was duly proved by Ex. PW2/1. However, the Claims Tribunal deducted the conveyance allowance of Rs.800/- and took income of deceased as Rs.12,342/- per month. The Claims Tribunal deducted 1/3 towards the personal expenses of the deceased and applied multiplier of 14 to compute the loss of dependency at Rs.13,85,000/-. The Claims Tribunal awarded Rs. 1,50,000/- towards loss of estate and Rs.50,000/- towards funeral expenses. Total compensation award is Rs. 16,35,000/-.

3. Learned counsel for the claimants/appellants in MAC APP No. 683/2017 urged at the time of hearing that the income of deceased be taken as Rs.13,142/- as per Ex. PW2/1 and future prospects of 50% be added to compute the loss of dependency.

4. Learned counsel for the Insurance Company submits that the compensation towards love and affection be set aside and the compensation for loss of estate and funeral would be reduced in terms of ***National Insurance Co. Limited vs. Pranay Sethi and Ors.*** 2017 SCC Online SC 1270.

5. There is merit in the contentions urged by learned counsel for the claimants. The income of the deceased is taken as Rs.13,142/- as per Ex. PW2/1, 50% is added towards the future prospects, 1/2 is deducted towards personal expenses, and the multiplier of 18 is applied to compute loss of dependency as Rs.21,29,004/-. The compensation for loss of love and affection is not a permissible head and is set aside. Rs.15,000/- is awarded for loss of estate and Rs.15,000/- is awarded towards funeral expenses. The claimants are entitled to total compensation of Rs.21,59,004/- along with interest @ 9% per annum.

6. Learned counsel for the appellants in MAC.APP.77/2017 submits that the recovery rights have been granted to the Insurance Company on the ground that there was no fitness certificate. It is submitted that the appellants had a valid permit in respect of the offending vehicle and the driver was having valid driving licence at the time of incident. It is submitted that fitness certificate is not a permissible ground for grant of recovery rights. Reliance is placed on ***National Insurance Co. Ltd v. Nicolletta Rohtagi & Ors.***, III (2002) ACC 292 (SC) and ***United India Insurance Company Ltd. v. Shila Datta & Ors.***, Civil Appeal Nos. 6026-6027/2007 decided on 13th October, 2011 in which this Court has declined the recovery rights on the similar grounds. Following ***National Insurance Co. Ltd v. Nicolletta Rohtagi*** (supra) and ***United India Insurance Company Ltd. v. Shila Datta*** (supra), the recovery rights granted by the Claims Tribunal are set aside.

7. Both the appeals are allowed and the award amount is enhanced from Rs.16,35,00/- to Rs.21,59,004/- along with interest @ 9% per annum in favour of the claimants and against M/s ICICI Lombard Insurance Co. Ltd.

8. ICICI is directed to deposit the enhanced amount along with upto date

interest with the Registrar General of this Court within four weeks. The proof of deposit along with computation of interest be filed within a week of deposit.

9. List for disbursement of compensation amount on 24th July, 2018.

10. The Claimants shall remain present in the Court on next date along with passbooks of their savings bank accounts near the place of their residence as well as PAN card and Aadhaar card. The concerned bank is directed not to issue any cheque book and/or debit card to the claimants and if the same has already been issued, the concerned bank is directed to cancel the same and make an endorsement on the passbook that no cheque book or debit card shall be issued to respondents No.1 and 4 without the permission of this Court. Claimants shall produce the copy of this order before the concerned bank whereupon the bank shall make an endorsement on the passbooks. Claimants shall produce the original passbooks with the necessary endorsement on the next date of hearing.

11. Statutory amount be refunded back in MAC APP.77/2017 after deposit of enhanced award amount.

12. Pending application is disposed of.

13. List on 24th July, 2018.

14. Copy of this order be given *dasti* to both the parties under the signature of Court Master.

J.R.MIDHA, J.

APRIL 26, 2018
Pallavi