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

% **Date of Decision: 07th March, 2018**

\+ MAC.APP. 802/2017 & CM No.32620/2017 & 2663/2018

ICICI LOMBARD GENERAL
INSURANCE COMPANY LTD ..... Appellant
Through: Mr. Vishnu Mehra, Adv.

versus

DINESH KUMAR & ORS ..... Respondents
Through: Mr. Anupam Yashvardhan, Adv. for R1 to R3.

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

JUDGMENT (ORAL)

1. The appellant has challenged award of the Claims Tribunal whereby compensation of Rs.2,72,75,000/- has been awarded to respondents No.1 to 3.

2. On 13th October, 2013, Sidhant Sharma aged 21 years was hit by car bearing No. DL-9CM-4057 which resulted in the fatal injuries. The deceased was survived by his parents and brother who filed an application for compensation before the Claims Tribunal claiming compensation of Rs.50,00,000/- on the ground that the deceased was a student of BBA earning Rs.16,000/- per month. However, at the stage of the evidence, the claimants set up a new plea that the deceased was offered the position of Deputy Manager at an annual CTC of Rs.15,00,000/- per annum after completion of BBA course. The claimants produced PW-2 who deposed that his Company would have paid Rs.15,00,000/- per annum to the deceased

after completion of BBA course. However, PW-2 in his cross-examination, could not produce any document even to show that he was paying Rs.16,000/- per month to the deceased. Although the occupation as well as the income of the deceased were not proved, the Claims Tribunal surprisingly took the income of the deceased as Rs.15,00,000/- per annum, deducted 50% towards future prospects, deducted 1/3 towards personal expenses and applied the multiplier of 18 to compute the loss of dependency as Rs.2,70,00,000/-. The Claims Tribunal further awarded Rs.1,00,000/- towards loss of estate, Rs.1,00,000/- towards love and affection and Rs.25,000/- towards funeral expenses. The Claims Tribunal awarded total compensation of Rs.2,72,25,000/-.

3. Leaned counsel for the appellant urged the following submissions at the time of hearing: -

3.1 Impugned award is perverse and contrary to the well settled principles of the law, which have been deliberately violated by the Claims Tribunal to award astronomical compensation of Rs. 2,72,25,000/-.

3.2 The deceased was a student of BBA and the Court should have taken minimum wages of a graduate into consideration with respect to his earning capacity.

3.3 The addition of future prospects is not warranted in the case of a student.

3.4 The Claims Tribunal violated the well settled law by deducting 1/3 towards the personal expenses whereas the law with respect to the deduction of personal expenses of unmarried person is well settled that 50% has to be deducted.

4. There is merit in the contentions urged by learned counsel for the appellant which warranted serious consideration by the Claims Tribunal. However, the Claims Tribunal neither considered the contentions urged by the appellant nor gave any reasoned finding in respect thereof. This Court is satisfied that the impugned award is perverse and contrary to the well settled principles of law.

5. Learned counsel for respondents No.1 to 3 submits that the impugned award be set aside and the matter be remanded back to the Claims Tribunal with permission to claimants to lead the additional evidence with respect to the documents filed along with CM No.2663/2018 under Order XLI Rule 27 of Code of Civil Procedure,1908.

6. This Court is of the view that the cases like the present one have arisen because of the failure of the insurance companies to appoint an investigator to verify the genuineness of the accident and a surveyor to assess the loss. This practice is being regularly followed by the insurance companies in all cases other than motor accident claims. However, in cases of death and injuries arising out of the motor accident claims, the insurance companies do not ordinarily appoint any investigator or surveyor and they file the written statement to deny everything for want of knowledge except the insurance policy. The result of such an approach is that the claimants exaggerate their claims to any extent as it has happened in the present case. If the insurance company, in the present case, had appointed the investigator and surveyor immediately upon receiving the copy of DAR/claim application, this situation would not have arisen. In the present case, the insurance company is not even aware of the correct factual position which they were duty bound to ascertain immediately upon getting the intimation

about the accident. Be that as it may, the insurance company is at liberty to appoint an investigator/surveyor even at this stage and to lead additional evidence before the Claims Tribunal. In MAC.APP.821/2017 titled *Bajaj Allianz General Insurance Co. Ltd. v. Devi Nandam Kumar*, decided on 21st February, 2018, this Court observed as under:

> *"This Court is of the view that the insurance companies are duty bound to verify every claim by appointing an Investigator to verify the genuineness of the claim as well as the material particulars of the claim and a surveyor to assess the loss suffered by the victim. In cases of grievous injuries, the insurance companies should also get the injured examined by an independent medical expert to examine the injured and verify the medical claim of the injured. However, the appellant, in the present case, does not appear to have appointed any Investigator or surveyor to verify and assess the claim of respondent No.1."*

7. For the reasons discussed hereinabove, the appeal is allowed, impugned award is set aside and the case is remanded back to the Claims Tribunal for fresh adjudication after recording the additional evidence of respondent No.1 with respect to *Annexure A to G* filed along with the CM No.2633/2018. The appellant is also permitted to lead additional evidence before the Claims Tribunal. Pending applications are disposed of.

8. The parties shall appear before the Claims Tribunal on 02nd April, 2018 at 02:00 P.M. The Claims Tribunal shall consider all the contentions of the appellant and pass a fresh award after recording the additional evidence of the parties untrammeled by any finding recorded in the award dated 28th July, 2017.

9. Considering the perversity in the impugned award, it is deemed appropriate that copy of this judgment as well as the judgment dated 21st

February, 2018 in MAC.APP. 821/2017 be sent to Hon'ble the Acting Chief Justice as well as the Inspecting Judges Committee of the Judicial Officer for the year 2017.

10. The statutory amount as well as the amount deposited by the appellant in terms of the order dated 08th September, 2017 be refunded back to the appellant.

11. Copy of this judgment be given *dasti* to counsels for the parties under signature of Court Master.

MARCH 07, 2018 **J.R. MIDHA, J.**

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