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

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Decided on: 28.08.2019

+ **MAC.APP. 510/2015, CM APPL. 11560/2015 & CM APPL. 8184/2019**

BHARTI AXA GENERAL INSURANCE CO LTD Appellant

Through: Mr. Navneet Kumar and Mr. Mohit Singh, Advocates.

Versus

INDU GUPTA & ANR Respondents

Through: Mr. Vineet Chadha, Mr. Ajay Kumar and Mr. Pavit Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

CM APPL. 8184/2019 (by R-1 & R-2 for early hearing)

1. This application seeks early hearing of the appeal.
2. For the reasons mentioned in the application, it is allowed.

MAC.APP. 510/2015, CM APPL. 11560/2015

3. At joint request, the appeal is taken up for hearing.
4. The award of compensation dated 30.03.2015 in MACP No. 706/2013 is impugned on the ground that no contributory negligence has been apportioned to the driver of the motor car. The appellant argues that the car which dashed into the insured vehicle was going at a high uncontrollable

speed and resultantly crashed ahead into the insured truck, appropriate contributory negligence should have been apportioned upon the driver of the motor car which dashed into the truck. This aspect has been dealt with in the impugned order as under:

“18. The petitioners has well explained the mode and manner of the driver of the offending vehicle resulting the fatal injuries caused to all deceased due to vehicular accident in this case. Moreover the insurance company has failed to establish that the violation of deceased driver was so fundamental in nature as would have contributed to the very cause of accident. Further the driver of the offending vehicle /respondent No.1 has already been charge sheeted for the offence u/s 279/283/304-A IPC, The respondent No.1 has even not filed any complaint against police authority for his false implication in the criminal case before any authority. Respondents No. 1 & 2 and insurer/respondent No.3 also failed to lead any specific evidence the aspect of contributory negligence. Therefore, I do not agree with the contention of the Ld. Counsel for respondents that deceased was liable for contributory negligence. Hence, the plea of insurer and other respondents No.1 & 2 stand rejected. ”

5. The appellant contends that: (i) the insured truck was parked on the extreme left of the service lane into which the motor car being driven at an uncontrollable speed crashed in broad day light, at 1:30 p.m. in the afternoon, therefore, (ii) the accident with the insured truck was entirely because of the rash and negligent driving of the car driver.

6. This Court is not persuaded by the said contentions because a glance, at the photographs in the LCR it is shown that the truck was parked in the middle of the lane for high speed vehicles, abutting the road divider. This lane is not meant for heavy vehicles, such as the insured truck.



7. The photographs show that the car driver had struck on the left rear side of the offending vehicle. Obviously, he made a valiant attempt to avoid a crash with the vehicle ahead of it. All four occupants of the car i.e. two children and their parents passed away in the unfortunate accident. The cause of the accident is the parking of the truck in the middle of the road.

8. In view of the above, the contention apropos contributory negligence is rejected.

9. The appellant's second argument is that instead of 40% towards 'loss of future prospects' 50% has been granted.

10. In terms of the para 61. (iv) of *National Insurance Co. Ltd. vs. Pranay Sethi & Ors.* (2017) 16 SCC 680, if the deceased was self-employed, which was the position in the present case, an addition of 40% of the established income is to be given for a person who is below the age of 40 years. The deceased was 34 years of age on the date of the accident, accordingly, 40% ought to have been awarded towards 'loss of future prospects' instead of 50%. The impugned order is modified to this extent.

11. Furthermore, in terms of the *Pranay Sethi (supra)*, Rs. 15,000/- each shall be payable towards 'loss of estate' and 'loss of funeral expenses'. Additionally, the claimants shall also be entitled to compensation of Rs. 40,000/- and Rs. 50,000/- each towards 'loss of consortium' and towards 'loss of love and affection' respectively, in terms of the dicta of the Supreme Court in *Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors.* 2018 SCC OnLine SC 1546.

12. Lastly, the appellant contends that the deduction of 1/3rd towards personal expenses of the son was unjustified because all his dependants, except his mother, had passed away.

13. The Court is of the view that in the peculiar facts and circumstances of this case, the wife would not be considered dependant because she was herself a business woman and was earning sufficient amounts for herself and for the children.

14. In the circumstances, the deceased son's expenses would primarily go towards care of his parents. Accordingly, 1/3rd of his earnings would be

deducted towards personal expenses and 2/3rd was apportioned towards two dependents i.e. parents.

15. The Court finds no reason to interfere with the impugned award in this regard.

16. It is argued that the father was not dependent upon him, however, no evidence has been led by the insurer to show that the father, who was 65 years of age, was not dependent upon the son.

17. In the circumstances, the learned Trial Court rightly concluded that the father too was dependent.

18. A fresh computation of the award in terms of this order shall be prepared and furnished to the beneficiaries of the award within three weeks of receipt of copy of this order and the requisite amounts shall be deposited before the learned Tribunal, within four weeks to be disbursed to the beneficiaries of the award in terms of the scheme of disbursement specified in the award.

19. Excess amounts, if any, be returned to the appellant, alongwith the statutory deposit and corresponding interest accrued thereon.

20. The appeal is disposed-off in the above terms.

NAJMI WAZIRI, J

AUGUST 28, 2019

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