$~38, 39, 40

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

% **Date of Decision: 24th May, 2019**

\+ MAC.APP. 698/2017

RELIANCE GENERAL INSURANCE COMPANY LTD ..... Appellant

Through: Ms.Prerna Mehta, Advocate

versus

NARESH MANDAV & ORS ..... Respondents

Through: Mr.Palvinder Singh, Mr.D.K. Sharma, Advocates for respondents No.1 and 2

\+ MAC.APP. 729/2017 & CM. APP. 29408/2017

M/S MAHARAJA AUTOMOBILES (INDIA) PVT LTD & ANR ..... Appellants

Through: Mr.Pramod K. Sharma, Mr.Prashant Bajaj, Advocates

versus

RELIANCE GENERAL INSURANCE COMPANY LIMITED & ORS ..... Respondents

Through: Ms.Prerna Mehta, Advocate
Mr.Palvinder Singh, Mr.D.K. Sharma, Advocates for respondents No.2 and 3

\+ MAC.APP. 334/2018

NARESH MANDAV & ANR ..... Appellants

Through: Mr.Palvinder Singh, Mr.D.K. Sharma, Advocates

versus

NAEEM AHMED & ORS
(RELIANCE GENERAL INSURANCE CO LTD) ..... Respondents
Through: Ms.Prerna Mehta, Advocate

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

J U D G M E N T (ORAL)

MAC.APP. 334/2018

1. The accident dated 15th April, 2015 resulted in the death of Deepak Kumar Mandav. The deceased was aged 25 years at the time of the accident and was working as a Manager with AMP Motors earning Rs.40,000/- per month at the time of the accident. The deceased was survived by his parents who filed application for compensation before the Claims Tribunal.

2. The Claims Tribunal took the income of the deceased as Rs.31,770/- per month, deducted 50% towards personal expenses and applied the multiplier of 18 to compute the loss of dependency as Rs.34,31,160/-. The Claims Tribunal awarded Rs.1,00,000/- towards loss of love and affection, Rs.25,000/- towards loss of estate and Rs.25,000/- towards funeral expenses. Total compensation awarded is Rs.35,81,160/-.

3. Learned counsel for the appellant in MAC APP.334/2018 urged at the time of the hearing that the Claims Tribunal has not considered future prospects @ 50% while computing the compensation.

4. Learned counsels for the driver, owner and insurance company do not dispute the entitlement of the claimant to claim future prospects of 50%. It is, however, submitted that the compensation for loss of love and affection is no more a permissible head. It is further submitted that the compensation towards loss of estate and compensation towards funeral expenses is liable to 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 counsels for the parties. The future prospects of 50% are awarded to the claimants. The compensation of Rs.1,00,000/- towards loss of love and affection is set aside. The compensation towards loss of estate and funeral expenses are reduced to Rs.15,000/- each.

6. Taking the income of the deceased as Rs.31,770/- per month, adding 50% towards future prospects, deducting 50% towards personal expenses and applying the multiplier of 18, the loss of dependency is computed as Rs.51,46,740/-. Adding Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral expenses, the total compensation is computed as Rs.51,76,740/-.

7. MAC APP.334/2018 is allowed and the compensation amount is enhanced from Rs.35,81,160/- to Rs.51,76,740/- along with interest @ 9% per annum from the date of filing claim i.e. 22nd July, 2015.

8. Reliance General Insurance Company Ltd. is directed to deposit the enhanced award amount with the Registrar General of this Court within four weeks. The computation of interest on an affidavit be filed within one week thereafter.

9. The appellant in MAC APP.698/2017 has deposited the award amount before the Claims Tribunal out of which 50% amount has been released to the claimants. The Claims Tribunal is directed to transfer the balance 50% amount deposited by the insurance company to the Registrar General of this Court within four weeks.

10. The claimants shall furnish the particulars of the PAN card to the insurance company to enable them to deposit the TDS amount and to issue a TDS certificate to the claimants.

11. List for disbursement of the compensation amount on 26th July, 2019 at 2.30 P.M.

12. The claimants shall remain present in Court on the next date of hearing.

13. The statutory amount be refunded back to the appellant in MAC APP.698/2017 and 729/2017.

MAC APP.698/2017 and MAC APP.729/2017 & CM. APP. 29408/2017

14. The Claims Tribunal has granted recovery rights to insurance company to recover the award amount from the owner and driver which is under challenge by the owner and driver in MAC APP.729/2017.

15. Vide order dated 19th April, 2018, the appellants in MAC APP.729/2017 were permitted to lead additional evidence to prove that the driver of the offending vehicle was having a valid driving licence on the date of the accident.

16. On 18th September, 2018, the additional evidence was recorded by examining the witness from District Transport Office, Tuensang, Nagaland.

17. Learned counsel for the appellant in MAC APP.729/2017 submits that the driver of the offending vehicle had a valid driving licence on the date of

the accident and therefore, the insurance company is not entitled to the recovery rights.

18. Learned counsel for the appellant in MAC APP.698/2017 submits that the driving licence of the driver was not valid. That apart, it is submitted that the owner of the offending vehicle did not even have the permit.

19. Learned counsel for the owner/driver submits that the issue of permit was neither raised by the insurance company before the Claims Tribunal nor any finding has been recorded by the Claims Tribunal. Learned counsel for the insurance company submits that this issue was raised before the Claims Tribunal but no finding has been recorded in the impugned award.

20. This Court is of the view that it would be appropriate to remand the issue of recovery rights back to the Claims Tribunal for fresh adjudication. In that view of the matter, the finding of the Claims Tribunal granting recovery rights to the insurance company are hereby set aside and the issue of recovery rights is remanded back to the Claims Tribunal for fresh adjudication.

21. The Claims Tribunal shall consider the additional evidence recorded by this Court on 18th September, 2018. Learned counsel for the owner/driver of the offending vehicle submits that they had a valid permit and they will approach the Claims Tribunal to lead additional evidence in this regard. They are at liberty to do so.

22. Both the parties shall appear before the Claims Tribunal on 10th July, 2019 at 2:30 PM.

23. The record of the Claims Tribunal be returned back forthwith. The copy of the additional evidence recorded on 18th September, 2018 be sent to the Claims Tribunal.

24. It is clarified that nothing recorded herein be considered as final express of this Court on the issue of recovery rights and the Claims Tribunal shall consider of the contentions urged by the parties.

25. The appellant in MAC.729/2017 has deposited the award amount with the Claims Tribunal in terms of the order dated 18th August, 2017. The Claims Tribunal shall retain the amount in fixed deposit till the fresh adjudication of the issue of recovery rights.

26. MAC. APP. 698/2017 and MAC. APP. 729/2017 are disposed of in above terms.

27. Pending application is disposed of.

28. Copy of this judgment be sent to the Claims Tribunal for compliance of para-9 above.

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

J.R. MIDHA, J.

MAY 24, 2019
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