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

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Decided on: 15.10.2019

+ MAC.APP. 690/2017 & CM APPL. 28108/2017

RELIANCE GENERAL INSURANCE COMPANY LTD

..... Appellant

Through: Ms. Perna Mehta, Advocate.

versus

MONA & ORS

..... Respondents

Through: Mr. S.N. Parashar, Advocate for R-1
to R-4.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 19.05.2017 passed by the learned MACT in MACT No. 330/17 on the ground that refund of Rs. 23,380/- of the tax paid for AY 2016-17 for the sole ITR, which was filed by the deceased albeit prior to his demise, cannot be taken as the basis of his earnings and for calculation of the claimants' 'loss of dependency'.

2. The Court is of the view that in so far the said ITR was duly considered by the Income Tax authority and the refund of Rs. 23,380/- was given to the deceased assessee coupled with the fact that the ITR was filed before the accident itself, there is no reason to doubt either the ITR or the

finality of his income having been statutorily established, therefore, the same ought to be taken into consideration.

3. Ms. Mehta, the learned counsel for the appellant submits that the claimants had claimed that the income of the deceased was from three sources: (i) he was a newspaper vendor; ii) he was an agent of Bajaj Allianz General Insurance Co.; iii) he was running a shop of photostat and was earning rental income as well.

4. However, there is no ledger or distribution of income filed apropos income from each of the aforesaid sources. In the circumstances, a bifurcation of earning from rental income cannot be made and no conjectural deductions can be made in this regard. The ITR income was readily taken as the basis for calculation of 'loss of dependency'. It calls for no interference.

5. The second argument of the appellant is that the impugned order has erred in not considering contributory negligence of the deceased who while carelessly crossing the street, got hit by the insured vehicle. Therefore, some element of negligence ought to be attributed to him.

6. The aforesaid contention while attractive in theory cannot be sustained upon appreciation of the evidence. The accident had occurred right in front of Hazrat Nizamuddin Police Station, the newspaper vendors were said to be sitting near the footpath on the other side of the street. The accident occurred at 06:30 a.m. on 24.11.2016, ordinarily it is dark at that time. The vehicle would have just turned onto Mathura Road from the Sabz Burj roundabout and unless it was speeding imprudently, it would easily be controlled because the hawkers were stated to have been sitting on the road near the pavement. The distance from the roundabout to the place where the hawkers were sitting would not be more than 30 or 40 metres. Unless it was

already in an accelerated speed, it would have easily been stopped to avoid any accident of the intensity in which Raj Kumar, got fatally injured and two other persons, namely Anil John and Sumit sustained injuries. The police came to the spot which was just a few metres across the street. The FIR was registered on the statement of Anil John, an eyewitness. The reasoning of the learned Tribunal in this regard is as under:

“14.Though no eyewitness to the accident has been examined by the petitioners, but perusal of charge sheet shows that FIR was registered on the statement of eyewitness Anil John who also suffered injuries in the same accident. Eyewitness Anil John gave statement to police that he buy newspaper from salesman near Humayun Tomb, H N Din and supply it in the area of Sun Light Colony and Bhagwan Nagar. On 24.11.2016 at about 05.45 AM, as per his daily routine, he went to take newspaper. At about 06.30 AM, one car bearing registration No. HR-38W-6913, being driven by its driver in a rash and negligent manner, came from the side of Neela Gumbad, Mathura Road and hit him due to which he fell down. Said car also hit his friends Raj Kumar and Sumit who were taking newspapers. They also suffered injuries. Further, said car also hit one scooter bearing registration No. DL-13SE-3295 and one cycle. He has categorically stated in his statement that accident occurred due to sole negligence of respondent No. 1 who was driving offending car in a rash and negligent manner. Respondent No. 1/ Mohan Singh got himself examined as RIW1 and deposed that accident was not caused due to his negligence. He has deposed that deceased was himself in a hurry to cross the road to distribute newspapers. Deceased suddenly came in front of his vehicle and due to which he lost control over the car and struck other vehicles parked on main road. However, RIW1 Mohan Singh has himself admitted during his cross-examination that FIR No. 494/16 has

been registered at PS H N Din against him. He has admitted that he was arrested by the police and was released on bail. He has also admitted that he has not filed any written complaint or verbal complaint to the higher police officials against the 10 against his false implication. Conduct of respondent No. 1 of not filing any complaint against his false implication as well his admissions in his cross-examination, compels this Court to draw an adverse inference against him. Furthermore, After due investigation, police found respondent No. 1 accused of rash and negligent driving and charge-sheeted him for commission of offence punishable under Section 279/337/304-A IPC.”

7. What emanates from the above is that the accident had occurred in which three persons were injured, one fatally. The involvement of the offending vehicle is not in dispute. The narration of facts by Anil John itself goes on to show that the vehicle was being driven in a rash and negligent manner. Accordingly, the case is without merits.

8. At this stage, Ms. Mehta, the learned counsel for the appellant, states that she would not press the appeal any further.

9. The Court would note that there are four claimants, however, the quantum of compensation on account of non-pecuniary loss is awarded as Rs. 2,00,000/- for ‘loss of love and affection’ and ‘loss of consortium’. In the circumstances, 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, compensation towards ‘loss of consortium’ and ‘loss of love and affection’ @ Rs. 40,000/- and Rs. 50,000/- respectively would be payable to each of the claimants. It is so granted. The amount payable under these two heads would be as under:

S.No.	Particulars	Amount
1.	Loss of love and affection [Rs. 50,000/- x 4 (claimants) less Rs. 1,00,000/- (already awarded)	Rs. 1,00,000/-
2.	Loss of consortium [Rs. 40,000/- x 4 (claimants) less Rs. 1,00,000/- (already awarded)	Rs. 60,000/-
TOTAL		Rs. 1,60,000/-

10. The additional amount of Rs. 1,60,000/-, alongwith interest thereon @ 9% per annum from the date of filing of the claim petition till its realization, shall be deposited by the appellant before the learned Tribunal within three weeks from the date of receipt of copy of this order to be released to the beneficiaries of the award, in terms of the scheme of disbursement specified therein.

11. The appellant shall have the right of recovery apropos the monies paid by it to the beneficiaries of the Award.

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

13. The statutory amount, alongwith interest accrued thereon, be returned to the appellant.

NAJMI WAZIRI, J

OCTOBER 15, 2019/AB