$~2, 4 & 18

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

% **Date of Decision: 14th February, 2020**

\+ MAC.APP. 766/2016 & CM No.34678/2016

M/S THE NEW INDIA ASSURANCE CO LTD ..... Appellant
Through: Mr. Navdeep Singh, Adv.

versus

VARUNA BHUSHAN & ORS ..... Respondent
Through: Sh. R.K. Shrama, Adv. with Ms. Dezy Gaur and Mr. Ravinder Adlakha, Adv. for R-1.
Mr. Navneet Goyal, Adv. for R-2 & 3.
Ms. Suman Bagga, Adv. with Mr. Pankaj Gupta, Adv. for Iffco Tokio.

\+ MAC.APP. 1116/2017

VARUNA BHUSHAN TULI ..... Appellant
Through: Sh. R.K. Shrama, Adv. with Ms. Dezy Gaur and Mr. Ravinder Adlakha, Adv.

versus

TEJA SINGH & ORS
(IFFCO-TOKIO GENERAL INSURANCE CO LTD
& THE NEW INDIA ASSURANCE CO LTD) ....Respondents
Through: Ms. Suman Bagga, Adv. with Mr. Pankaj Gupta, Adv. for Iffco Tokio.
Mr. Navdeep Singh, Adv. for R-5.
Mr. Navneet Goyal, Adv. for R-6 & 7.

\+ MAC.APP. 758/2016

IFFCO TOKIO GENERAL INSURANCE CO LTD..... Appellant

Through: Ms. Suman Bagga, Adv. with Mr. Pankaj Gupta, Adv.

versus

VARUNA BHUSHAN & ORS ..... Respondents

Through: Sh. R.K. Shrama, Adv. with Ms. Dezy Gaur and Mr. Ravinder Adlakha, Adv. for R-1.
Mr. Navneet Goyal, Adv. for R-2 & 3.
Mr. Navdeep Singh, Adv. for R-7.

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

J U D G M E N T (ORAL)

1. The parties have challenged the award of the Claims Tribunal whereby compensation of Rs.1,12,17,235/- has been awarded to the claimants.

2. On 18th June, 2007, late Jagan Nath Pahuja was travelling in Indica Car bearing No. PB 01 0733 while going from Delhi to Chandigarh. When the car reached near HSIDC Gate, an Innova car came in front of the Indica car after jumping central verge and fell on the Indica car which resulted in the death of Jagan Nath Pahuja.

3. Jagan Nath Pahuja was aged 26 years at the time of the accident and was working as a senior engineer earning Rs.54,275.66 per month. The deceased was survived by his widow and his parents who claimed compensation.

4. The Claims Tribunal took the income of the deceased as Rs.54,275.66 added 50% towards future prospects, deducted 1/3rd towards his personal

expenses and applied multiplier of 17 to compute the loss of dependency as Rs.1,10,72,235/-. The Claims Tribunal awarded Rs.1,00,000/- towards love and affection, Rs.10,000/- towards loss of estate, Rs.10,000/- towards loss of consortium and Rs.25,000/- towards the funeral expenses. Total compensation amount awarded is Rs.1,12,17,235/-.

5. The learned Claims Tribunal held driver of Indica car as well as Innova car equally negligent and directed their respective insurance companies to pay 50% of the compensation to the claimants. The Claims Tribunal awarded 10% of the compensation amount to the widow of the deceased considering that she got re-married after the accident and the balance 90% compensation amount was given to the parents of the deceased.

6. Learned counsel for the appellant in MAC. APP. 766/2016 urged at the time of hearing that the accident occurred due to the negligence of the Innova car and there was no negligence on the part of the driver of the Indica car and therefore, the appellant be exempted from the liability to pay the compensation.

7. Learned counsel for the appellant in MAC. APP. 758/2016 urged at the time of hearing that the drivers of both the vehicles were equally negligent and the Claims Tribunal has rightly held them liable to pay 50% compensation amount to the claimants. Without prejudice, it is submitted that the employer of the deceased paid Rs.10,00,000/- insurance amount to the legal representatives of the deceased which should be deducted from the compensation amount awarded by the Claims Tribunal.

8. Learned counsel for the parents of the deceased urged at the time of hearing that both vehicles are guilty of composite negligence. It is further submitted that the compensation awarded by the Claims Tribunal is fair and

reasonable and does not warrant any interference. It is further submitted that the amount of Rs.10,00,000/- received by the legal representatives is not adjustable in the compensation amount.

9. Learned counsel for the widow of the deceased urged at the time of hearing that the widow of the deceased is entitled to 50% of the compensation amount.

10. With respect to the aspect of negligence, this Court has examined the statements of the witnesses as well as the site plan. This Court is of the view that 80% of the negligence is attributable to the driver of the Innova car as the Innova car crossed the central verge and came over to the wrong side where the Indica car was coming from the opposite direction. The driver of the Indica car is also responsible to extent of 20% negligence considering that he was driving fast and could not control his vehicle. The finding of the Claims Tribunal apportioning negligence of both the vehicles as 50% each is modified to the above extent.

11. With respect to the amount of Rs.10,00,000/- received by the legal representatives of the deceased, this Court issued court notice to the employer, M/s Quark Media House India Private Limited in pursuance to which the authorized representative of the employer appeared before this Court on 10th January, 2020 and produced the original record. He deposed that the employer paid insurance premium to cover the accident and medical insurance of 540 employees and thereafter, deducted Rs.4,000/- from the salary of the employees. The relevant documents are Ex. C-2, C-3 and C-4. This Court is of the view that amount of Rs.10,00,000/- received by the legal representatives of the deceased by virtue of an insurance policy in respect of which the premium was paid by the deceased is not deductable from the

compensation amount.

12. With respect to the apportionment of the compensation between the parents and widow of the deceased, this Court is of the view that the widow, mother and father are entitled to equal 1/3rd share each.

13. MAC. APP.766/2016 and MAC.APP.1116/2017 are allowed whereas MAC. APP. 758/2016 is dismissed. The compensation amount of Rs.1,12,17,235/- awarded by the Claims Tribunal is upheld in which the widow and the parents shall be entitled to 1/3rd share each.

14. The appellant in MAC. APP. 766/2016 has deposited Rs.50,27,396/- whereas the appellant in MAC. APP. 758/2016 has deposited Rs.1,00,25,298/- with the UCO Bank.

15. List for disbursement of the amount in terms of this judgment on 13th March, 2020.

16. UCO Bank shall give the present value of the FDR including interest up to next date of hearing to enable this Court to disburse the amount.

17. The appellant in MAC. APP. 758/2016 shall directly pay the amount payable to the appellants in MAC. APP. 766/2016 in terms of this judgment within four weeks.

18. The statutory amount be refunded to the appellants within four weeks.

19. Copy of this judgment be sent to UCO Bank for compliance.

20. Copy of this order be given *dasti* to counsel for the parties under the signatures of the Court Master.

J.R. MIDHA, J.

FEBRUARY 14, 2020
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