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

% Judgment delivered on: 16th February, 2021

\+ MAC.APP. 285/2020

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD. ..... Appellant

versus

MEERA DEVI & ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Suhail Malik, Advocate (through video conferencing)

For the Respondents: Mr. Rajiv Mishra, Advocate (through video conferencing)

CORAM:-
HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J.

CM APPLN. 5683/2021 (early hearing)

For the reasons stated in the application, the application is allowed. Appeal is taken up for consideration today.

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1. The hearing was conducted through.

2. Appellant impugns judgment dated 21.01.2020 whereby the Motor Accident Claims Tribunal has disposed of the Detailed Accident Report (DAR for short) and awarded compensation.

3. Before the Tribunal the Insurance Company had made an offer for settlement and had given a legal offer of Rs. 43,89,261/-, however, compensation awarded by the Tribunal is Rs. 79,10,592/-.

4. Tribunal has noticed that the accident had taken place between a commercial vehicle which hit a pedestrian who was crossing the road. The Tribunal has noticed that though a legal offer of Rs. 43,89,261/- was made, however, as per the computation made by the Tribunal as per the law laid down by the Supreme Court, compensation of Rs. 79,10,592/- was required to be awarded.

5. The DAR prima facie indicated that the vehicle was being driven in rash and negligent manner at a fast speed and in zigzag manner and hit the pedestrian causing his death.

6. Though the Insurance Company had taken a plea for deducting 20% of the compensation on account of the contributory negligence, the Tribunal found no justification for the same. The Offer had mentioned that the accident had taken place in the middle of the road and as such it should be assumed that deceased was crossing the road negligently.

7. Tribunal has held that said plea was not supported by any material collected during investigation and the FIR was registered on the basis of an independent public witness who is a MCD sweeper and he had stated that the offending vehicle had come at a fast speed and in a zigzag manner before hitting the pedestrian.

8. Tribunal had noticed that in view of Delhi Motor Accident Claim Tribunal Rules 2008, contents of DAR had to be presumed to be correct and read in evidence without formal proof of the same unless proof to the contrary was produced and as such the Tribunal held that no deduction could be made towards under the head contributory negligence.

9. Tribunal has further held that the monthly income as well as age of the deceased was not in dispute and since the deceased was in the age group of 50 to 55 years, multiplier of 11 was applied.

10. The contention of the Insurance Company that the compensation has to be calculated on the basis of spilt multiplier, has been negated by the Tribunal. The Tribunal has held that the application of split multiplier has neither been explained nor permissible in view of the settled law laid down by the Supreme Court.

11. Tribunal has further held that as the deceased was having a permanent job, future prospects at 15% would be applicable and since the deceased was survived by three dependents, one-third of the income was required to be deducted.

12. The accident is not in dispute. The legal offer made by the Appellant before the Tribunal in effect admits the negligence and liability. In that view of the matter, the tribunal had to compute the compensation on the basis of settled principles.

13. Based on the admitted income of the deceased, multiplier of 11, future prospects at 15% and deduction of one-third, the Tribunal computed the compensation at Rs. 78,05,960/-.

14. Tribunal has further awarded loss of consortium at Rs. 40,000/- for each of the legal heirs besides Rs. 10,000/- towards loss of estate and funeral expenses and accordingly awarded a sum of Rs. 1,50,000/- towards non pecuniary damages. Tribunal has thus computed the compensation at Rs. 79,56,000/- along with interest @ 8% per annum from the date of filing of the petition till deposit of the amount.

15. I find no infirmity in the view taken by the Tribunal and find no merit in the appeal. The appeal is accordingly dismissed.

16. It is submitted by learned counsel for the Respondent that the execution petition is listed on 19.02.2021 and warrants of attachment have been issued.

17. Learned counsel for the appellant submits that appellant shall deposit the awarded amount with the Tribunal on the next date before the Executing Court i.e. 19.02.2021. The statement is taken on record.

18. In view of the above, the warrants of attachment shall remain stayed till 19.02.2021. In case appellant deposits the amount with the Tribunal on 19.02.2021, the warrants of attachment shall not be

executed and if appellant fails to deposit the amount on or before 19.02.2021, the warrants of attachment may be executed in terms of directions issued by the Tribunal.

19. On deposit of the awarded amount and furnishing of proof by the appellant, the statutory deposit of Rs. 25,000/- be refunded to the appellant.

20. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

SANJEEV SACHDEVA, J

FEBRUARY 16, 2021
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