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

Date of decision: 12.10.2023

+ **MAC.APP. 472/2023**

+ **MAC.APP. 473/2023**

RELIANCE GENERAL INSURANCE CO LTD Appellant

Through: Mr.A.K.Soni, Adv.

versus

LAKSHYA KAUSHIK @ LAKSHYA & ORS. Respondents

Through: Mr.Aatreja Singh, Mr.Apoorva Aggarwal, Advs. for R-1 & 2.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CAV 537/2023 in MAC.APP. 472/2023

CAV 542/2023 in MAC.APP. 473/2023

1. As Mr.Aatreja Singh, learned Advocate, enters appearance for the caveators in these appeals, the Caveats stand discharged.

CM APPL. 53226/2023 (Exemption) in MAC.APP. 472/2023

CM APPL. 53362/2023 (Exemption) in MAC.APP. 473/2023

2. Allowed, subject to all just exceptions.

MAC.APP. 472/2023 & CM APPL. 53227/2023

MAC.APP. 473/2023 & CM APPL. 53363/2023

3. These appeals have been filed challenging the Award dated 08.07.2023 (hereinafter referred to as the 'Impugned Award') passed by the





learned Motor Accidents Claims Tribunal, West District, Tis Hazari Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT Case No.100/2019, titled ***Lakshya Kaushik @ Lakshya v. Mohd. Faeem & Ors.*** and in MACT Case No.97/2019, titled ***Lakshya Kaushik @ Lakshya & Anr. v. Mohd. Faeem & Ors..***

4. As the appeals arise out of claims filed for seeking compensation for the victims of the same accident and also raise similar questions of fact and law, these are considered in this common judgment.

5. It was the case of the claimants before the learned Tribunal that on 05.06.2018 at about 1.15 pm, Mr.Monu @ Gautam Kaushik (hereinafter referred to as the 'deceased'), while driving Maruti Swift Car No. UP 14AA 4024 with seven other occupants, was proceeding on Saharanpur Delhi Marg, near Jain Mandir on the way from Mata Shakumbhari Devi Temple after darshan from Burari to Delhi, when suddenly a truck bearing registration no. DL1GC 2608 (hereinafter referred to as the 'offending vehicle') came on that road from the opposite direction while being driven at high speed and in a rash and negligent manner. The truck which came from the wrong side struck the Maruti Swift Car, because of which the deceased and other occupants of the Maruti Swift Car suffered grievous injuries. In the accident the deceased along with three other occupants, including Ms. Mamta Kaushik, suffered fatal injuries. The deceased succumbed to his injuries on the date of the accident.

6. Based on the evidence led before it, the learned Tribunal has held that the claimants had been able to prove that the accident had taken place with the offending vehicle being driven in a rash and negligent manner. The learned Tribunal thereafter proceeded to award compensation to the





claimants.

7. The learned counsel for the appellant submits that, admittedly, eight persons were travelling in the Maruti Swift Car. He submits that the same clearly shows negligence on the part of the deceased as well inasmuch as the vehicle has a carrying capacity of only five persons. He submits that even otherwise, the accident had taken place due to the rash and negligent driving of the Maruti Swift Car by the deceased.

8. I am unable to find any merit in the above submission of the learned counsel for the appellant.

9. Before the learned Tribunal, the claimants had examined Ms.Mithilesh (PW1) and Ms.Vandana Sharma (PW2).

10. PW2- Ms.Vandana Sharma was the occupant of the Maruti Swift Car. She deposed about the mode and manner of the accident. Though she was cross-examined at length, the learned counsel for the appellant was unable to cast any doubt on her testimony, especially taking into account that she was herself present in the said vehicle.

11. Coupled with this, is the fact that the respondents did not lead any evidence to prove any contrary case of the manner in which the accident had occurred.

12. Merely because the vehicle was carrying more than the sitting capacity, cannot be a reason to attribute contributory negligence on the deceased. The accident, admittedly, had taken place with the offending vehicle coming from the wrong side and hitting the Maruti Swift Car in which the deceased was travelling. Therefore, I find no merit in the challenge laid by the appellant on this account.

13. The other challenge of the appellant to the Impugned Award is on the





determination of the income of the deceased by the learned Tribunal.

14. The learned counsel for the appellant submits that apart from producing the Income Tax Returns (in short, 'ITRs') of the deceased, the claimants did not file any other evidence that could prove the income of the deceased.

15. I am unable to find any merit in the said contention.

16. In **Kalpanaraj v. T.N. State Transport Corpn.** (2015) 2 SCC 764, the Supreme Court has held as under:

"8. It is pertinent to note that the only available documentary evidence on record of the monthly income of the deceased is the income tax return filed by him with the Income Tax Department. The High Court was correct therefore, to determine the monthly income on the basis of the income tax return...."

17. The claimants had produced ITRs of the deceased and Ms. Mamta Kaushik for the assessment years 2015-16, 2016-17, 2017-18. These ITRs stand duly proved by the testimony of the PW3- Mr.Vantesh Kumar, Inspector from the Income Tax Department. The ITRs would be the best evidence for assessing the income of the deceased at the time of the accident.

18. In view of the above, the challenge of the appellant to the determination of the income of the deceased and Ms.Mamta Kaushik is also without any merit.

19. In view of the above, I find no merit in the present appeals. The same are, accordingly, dismissed. There shall be no orders as to costs.

20. As the appeals are dismissed at the preliminary stage, the appellant is exempted from depositing the statutory amount with the Registry of this Court.





2023:DHC:7501



21. The appellant shall deposit the awarded amount with learned Tribunal, along with interest at the rate of 7% per annum as awarded from the date of the Detailed Accident Report/claim petition, that is, 13.02.2019, till the date of deposit of the awarded amount with the learned Tribunal, within a period of six weeks from today. The same shall be disbursed to the claimants in accordance with the schedule of disbursement as stipulated by the learned Tribunal in the Impugned Award.

NAVIN CHAWLA, J

OCTOBER 12, 2023/Arya/AS

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 16.10.2023

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MAC.APPs. 472/2023 & 473/2023

Page 5 of 5