



2024:DHC:4800



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Judgment reserved on : 24 April 2024**
Judgment pronounced on : 01 July 2024

+ **MAC. APP. 480/2017 & CM APPL. 6806/2018, CM. APPL. 8064/2020**

ICICI LOMBARD GENERAL INSURANCE CO LTD

..... Appellant

Through: **Mr. Pankaj Gupta & Ms. Suman Bagga, Advs**

versus

MAYA DEVI & ORS

..... Respondents

Through: **Mr. Rajiv K Garg & Mr. Ashish Garg, Advs.**

Mr. Amit Peswani, Adv. For Ms. Nandita Rao, ASC (Criminal) for State (GNCTD). Delhi Police.

Mr. Mohit Bhardwaj, Adv. For R4

+ **MAC. APP. 651/2018**

MAYA DEVI & ORS.

.....Appellants

Through: **Mr. Rajiv K Garg & Mr. Ashish Garg, Advs.**

versus

SACHIN DEV & ORS (ICICI LOMBARD MOTOR INSURANCE CO LTD)

...Respondents

Through: **Mr. Pankaj Gupta & Ms. Suman Bagga, Advs. For R3/Insurance Company.**

Mr. Mohit Bhardwaj, Adv. For R4



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+ MAC. APP. 652/2018

SHYAM SINGH

.....Appellant

Through: Mr. Mohit Bhardwaj, Adv.

versus

ICICI LOMBARD GENERAL INS CO LTD & ORS

.....Respondents

Through: Mr. Pankaj Gupta & Ms.
Suman Bagga, Advs. For
R1/Insurance Company.
Mr. Rajiv K Garg & Mr.
Ashish Garg, Advs. For R2

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. This common judgement shall decide the above noted appeals, which have been preferred in terms of Section 173 of the Motor Vehicles Act, 1988¹, by the contesting parties raising certain issues arising out of the judgment-cum-award dated 15.12.2016 passed by the learned Presiding Officer, Motor Accident Claims Tribunal², Dwarka Courts, New Delhi, in MACP No. 451/07/2014, whereby the claim petition preferred by the respondent Nos.1, 5 and 6/claimants under Section 166 and 140 of the M.V. Act was allowed and the liability to pay compensation has been fastened upon respondent Nos. 2 and 3 and the appellant/Insurance Company in 50-50% ratio, which is being assailed by the appellant/Insurance Company in MAC. APP.

¹ M. V. Act

² Tribunal



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480/2017. On the other hand, the claimants seek an enhancement of compensation, while Respondent No. 4, the driver and owner of the Scorpio, has filed appeals bearing MAC. APP. 651/2018 and MAC. APP. 652/2018, respectively, as cross objections to the main appeal.

FACTUAL BACKGROUND:

2. Shorn off unnecessary details, suffice it to state that the claimants are the mother and siblings of the deceased, Surrender Kumar, who was 25 years old at the time of the accident and employed in a private service. The deceased sustained fatal injuries in a road accident on 4.11.2006. The claimants subsequently filed a claim petition seeking compensation of Rs. 10 lakhs under various heads. They asserted that the deceased was a passenger in a Maruti Van bearing registration No. DAE-4078, which was being driven recklessly and negligently by Respondent No. 2/Sachin Dev. The accident occurred when the Maruti Van, upon reaching the Delhi Cantt. flyover, collided with a stationary Scorpio bearing registration No. DL-4C-R-5655, owned by Respondent No. 4/ Sh. Shyam Singh, which was parked on the left side of the road due to a tire puncture. This resulted in the registration of FIR³ No. 396/2006 under Sections 279 and 337 of the IPC⁴ with Police Station, Delhi Cantt. The Scorpio car⁵ was being driven by respondent No. 4 and admittedly insured by the appellant/Insurance Company.

3. Based on the pleadings of the parties, the learned Tribunal framed the following issues were framed: -

³ First Information Report

⁴ Indian Penal Code, 1860

**“Issue No. 1**

Whether Sh. Surender Kumar S/o Late Sh. Vijay Singh sustained fatal injuries in a motor vehicle accident dt. 04.11.2006 due to Rash and negligent driving of (Maruti Van) No. DAE-4078 by R1 and negligence of R3/Driver-owner of (Scorpio Car) No. DL-4C-R-5655?OPP

Issue No. 2

Whether the petitioner is entitled to claim compensation, if so, what amount and from whom? OPP

Issue No. 3

Relief.”

4. During the course of proceedings/trial before the learned Tribunal, the father of the deceased/Late Sh. Vijay Singh was examined as PW-1 and it would be apposite to refer to the observations made by the learned Tribunal while deciding the Issue No. 1, which go as under: -

“8. PW-1 Sh. Vijay Singh has deposed that on 04.11.2006 deceased Surender Kumar was going in Maruti Van bearing No. DAE-4078 driven by Respondent No. 1/Driver-Sachin Dev in rash and negligent manner and at Delhi Cant Fly Over, New Delhi, Respondent No.1/Driver-Sachin Dev hit Scorpio Car bearing No. DL-4C-R-5655 vWhich was stationed in negligence manner by R3/Shyam Singh and as a result his son Surender Singh was killed.

9. Motor Accident Claim is a summary inquiry. Provisions of Evidence Act are not strictly applicable to these proceedings; Driver of the offending vehicles was the best person to explain as to how the accidents took place but even driver of the offending vehicle have not even appeared in the witness box to explain as to how the accident had taken place and submit that accident was not the result of the negligence driving of Respondent No. (1)/ Sachin Dev. Accordingly, adverse inference has to be drawn against Respondent No. 1/Sachin Dev, driver of the offending vehicle because of his nonappearance in the witness box. Hon'ble High Court of Orrisa in National Insurance Co. Vs. Durdadshya Kumar Samal and Ors. AIR 1988 Oriss 229 has held in Para (4)as follows:-

“Motor Vehicles Act (4 of 1939), SS 110B, 110C-Negligence-Motor accident claim-Injuries on claimant such that driver

⁵ Offending Vehicle



would have been the best evidence - non - examination of driver for explaining cause of accident held on account of negligent driving, claimant sustained Injuries.”

10. In **Bimla Devi & Others Versus Himachal Road Transport Corporation & Others (2009) 13 SCC 513**, it has been observed that in a road accident, the strict principles of proof as in a criminal case are not attracted. Relevant portion of the judgment is reproduced as under:-

"15. In a situation of this nature, the Tribunal has rightly taken a holistic view of the matter. It was necessary to be borne In mind that strict proof of an accident caused by a particular bus in a particular manner may not be possible to be done by the claimants. The claimants were merely to establish their case on the touchstone of preponderance of probability. The standard of proof beyond reasonable doubt could not have been applied. For the said purpose, High Court should have taken into consideration the respective stories set forth by both the parties."

11. As per law in the present case the claimant need not prove their case beyond reasonable doubt and the case is to be judged on the touchstone of preponderance of probability. In view of record and evidence of PW-1, it is clear that Respondent No. (1)/ Sachin Dev while driving Maruti Van bearing no. DAE-4078 in rash & negligent manner hit the Scorpio Car bearing No. DL-4C-R-5655 which was stationed by R3/Shyam Singh in negligent manner and caused fatal injury to deceased Surrender Kumar. Thus, this issue is decided accordingly.”

5. As regards decision on Issue No. 2 is concerned, the learned Tribunal considering the date of birth of the deceased as per the school certificate viz., 02.04.1981 applied the multiplier of ‘18’. It was submitted by the claimants before the learned Tribunal that the deceased was working in a private service and was drawing a monthly salary of Rs. 5,000/-, however, since no documentary proof of the same was placed on the record, hence the minimum wages as on the date of the accident was applied for a Matriculate person by the learned Tribunal. Accordingly, the income of the deceased was reckoned to be Rs. 3,760/- x 12 = Rs. 45, 120/- (Rupees Forty-five thousand one



hundred and twenty only). The learned Tribunal applied 50% addition towards the future prospects as per decision in the case of **Sarla Verma v. DTC**⁶ and 50% deduction towards personal living expenses as the deceased was unmarried at the time of the accident. It would be apposite to reproduce the breakdown of the compensation awarded by the learned Tribunal to the claimants: -

“17. The breakup of compensation that has been awarded in favour of the petitioners have been tabulated as below :-

S. No.	HEAD	AMOUNT
1	Loss of dependency	Rs. 6,09,120/-
2	Loss of love and affection their deceased son	Rs. 50,000/-
3	For funeral expenses	Rs. 25,000/-
4	Loss of estate	Rs. 1,00,000/-
TOTAL		Rs. 7,84,120/-

6. Lastly, as regards apportionment of liability, the learned Tribunal observed that the accident occurred due to the negligence of the drivers of both the vehicles⁷ and fastened the liability to pay compensation upon the shoulders of respondent Nos. 2, 3 and the appellant/Insurance Company herein. The relevant operative portion of the judgement is reproduced below: -

“19. Though it has been argued by Respondent No. 6 that driver of-Scorpio Car was not negligent relying on judgment of Basant Kaur (Supra) and National Insurance Company (Supra) and after considering the facts and records of the case, it is clear that accident took place due to the negligence of both the drivers of the offending vehicles and even FIR 396/06 PS Delhi Cantt. was registered against them. Hence, Respondent No. 1, 2, and Respondent No. 6/ICICI Lombard Ge. Insurance Company Ltd. are liable to pay the compensation amount in 50- 50% ratio.

⁶ (2009) 6 SCC 121

⁷ Maruti Van bearing registration No. DAE-4078 and Scorpio bearing registration No. DL-4C-R-5655



Accordingly, 50% amount of total compensation be paid by Respondent No.1/Driver-Sachin Dev and Respondent No. 2/Owner-Jai Prakash and remaining 50% amount of total compensation be paid by Respondent No. 6/ICICI Lombard Ge. Insurance Company Ltd.

As per R6W1 5h. Gautam Bhatnagar, Manager (Legal) that despite service of Notice U/Or. 12 Rule 8 CPC Respondent No. 3/Shyam Singh failed to supply valid and effective DL. Hence, it is proved that Respondent no.3/Shyam Singh drove the vehicle bearing No. DL-4CR-5655 without valid and effective DL, thereby committing willful breach of the terms and conditions of the policy.

20. Therefore, in the factual matrix of the present case, the theory of "Pay and Recover" would apply. Thus, the insurance company, respondent no. 6/ICICI Lombard Gen. Insurance Company Ltd. shall first make payment of 50% amount of total compensation to the claimant thereafter, can get the same recovered from Respondent No. 3/Driver-cum-owner Shyam Singh.

21. In view of the above discussions, issue no. 2 is decided accordingly."

SUBMISSIONS ADVANCED AT THE BAR:

7. The learned counsel for the appellant/Insurance Company has assailed the impugned judgement-cum-award primarily on two grounds: firstly, it is contended that the learned Tribunal erred in its finding by including a 50% addition towards future prospects when calculating the loss of dependency. It is submitted that there was no evidence on the record demonstrating that the deceased was in permanent employment or had any better future prospects. Therefore, no amount should have been added for future prospects in the calculation of the loss of dependency. Secondly, it is contended that the interest @ 10% on the final award amount is on the higher side, and that the learned Tribunal can grant a maximum of interest @ 9%.



8. The appellant/Insurance Company further submits that the Scorpio Car was not negligently parked on the flyover but was stationed on the left side of the flyover due to a tire puncture. It is asserted that the accident in question occurred due to the rash and negligent driving of Respondent No. 2/Sachin Dev.

9. Suffice to state that in the cross-objections filed by the respondent No. 4/Shyam Singh i.e., the owner of the offending Scorpio Car, the grant of recovery rights to the appellant/ Insurance Company is assailed on the ground that the learned Tribunal erred in arriving at the finding that the objector/ respondent No. 4 was not holding a valid driving license. It is stated that the same could not be produced during the course of proceedings/trial due to the professional misconduct on the part of his counsel; and that merely because the owner/ driver failed to produce the driving license on service of the notice under Order XII Rule 8 of the CPC⁸, is not a conclusive proof that the driver of the offending vehicle had no valid driving license in the absence of positive evidence from the concerned Licensing Authority.

ANALYSIS & DECISION:

10. Having given my thoughtful consideration to the submissions advanced by learned counsels for the rival parties at the Bar and on perusal of the record, at the outset, this court finds that the present appeal deserves to be allowed albeit with some modifications.

11. First things first, it is pertinent to mention here that this Court *vide* order dated 24.05.2017 passed the following order:



“CM APPL. 19524/2017 (Exemption)

Allowed, subject to all just exceptions.

MAC.APP. 480/2017 & CM APPLs. 19523/2017 (stay) and 19525/2017

The appellant has impugned the award of compensation to the respondent nos. 5 & 6 on the ground that apportionment of 50% liability upon the appellant is erroneous. In a motor vehicle accident on 04.11.2006, one Surender Kumar lost his life because the vehicle in which he was travelling i.e. Maruti Van bearing No. DAE-4078 crashed into a Scorpio bearing registration No. DL-4C-R-5655 which was stationed in a negligent manner at Delhi Cantt. Flyover. The appellant contends that the vehicle was easily visible and it was for the driver of the Maruti Van to have averted the accident. The Tribunal relied upon the following judgements: (i) **Bimla Devi & Others Versus Himachal Road Transport Corporation & Others** (2009) 13 SCC 513; (ii) **Basant Kaur and Ors. Vs. Chatarpal Singh** No.2001 Legal Eagle (MP) 409 and a judgment of this Court in (iii) **National Insurance Co. Ltd. Vs. Pushpa Rana & Ors.** 2009 ACJ 287 in support of the proposition that motor accident claims are not decided based on the strict rules of evidence but are to be judged on the touchstone of preponderance of probability. In the circumstances the documents such as copy of FIR, DAR, police report showing complete investigation, records of criminal case against the driver, recovery memo, mechanical inspection memo etc. would be sufficient for the Court to conclude the factum of negligence.

In the present case, the accident happened because of the negligence of both the drivers of the offending vehicles i.e. the Maruti Van and the Scorpio. The driver of the Maruti Van, Mr. Sachin Dev, did not even appear in the witness box to submit that the accident did not happen as a result of his negligence or how the accident even took place, thereby giving reason to the Tribunal to draw an adverse inference against him. It was also concluded that the Scorpio vehicle, insured by the appellant, was stationed at the aforesaid flyover. In the circumstances, the apportionment of the compensation on the appellant to the extent of 50% cannot be faulted.

The other grounds for challenge are that: (i) instead of the age of the claimant i.e. the dependant mother of the deceased, the multiplier as per the age of the deceased has been taken; (ii) the minimum wages which have been taken into consideration in this case for loss of dependency is erroneous; and (iii) the rate of

⁸ The Code of Civil Procedure, 1908



interest of 10% p.a. instead of the usual rate of 9% p.a., has been granted.

The Tribunal took the minimum wages applicable in the year 2006 i.e. Rs.3760/- per month to which 50% was added towards loss of future prospects. Half of the said amount was deducted towards personal living expenses of the deceased, a bachelor. Thus, total loss of dependency arrived at was Rs.33,840/- per annum, on it a multiplier of 18 was applied.

The Court is unable to agree with the appellant's arguments. In MAC.APP.No.981/2015 titled: The Oriental Insurance Co. Ltd. v. Suman & Ors. decided on 9th August, 2016 while dealing with a similar case this Court held:

“4. The Claims Tribunal has taken the minimum wages of Rs.3,589.90 and after adding 50% towards the future prospects, the total income of the deceased has been taken as Rs.5,384.85 (Rs.3589.90 + Rs.1,794.95). This Court is of the view that the occupation of the deceased as a professional driver having been sufficiently proved, the income of the deceased can be safely presumed as Rs.5,384.85 per month even if future prospects are not awarded. It is not mandatory to resort the minimum wages in each and every case. Reference in this regard may be made to the judgment of the Supreme Court in Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy, AIR 2012 SC 100 in which 59 persons died in Uphaar tragedy and the Supreme Court granted compensation of Rs.10,00,000/- to the victims of above 20 years of age and Rs.7,50,000/- to the victims below 20 years of age on the basis of multiplier method. The Supreme Court applied the multiplier of 15 and deducted 1/3rd towards the personal expenses. The income of the victims aged more than 20 years was assumed to be Rs.8,333/- per month and that of victims aged less than 20 years was assumed to be Rs.6,249/- per month. The computation of the compensation awarded by the Supreme Court would be as under :-

For victims aged more than 20 years:-

$(Rs.8,333/- \text{ less } 1/3rd) \times 12 \times 15 = Rs.10 \text{ lakhs.}$

For victims aged less than 20 years:-

$(Rs.6249/- \text{ less } 1/3rd) \times 15 = Rs.7.5 \text{ lakhs.}$

5. It is relevant to note that the Uphaar tragedy took place on 13th June, 1997 and the minimum wages at the relevant time were less than Rs.2600/-. Although there was no proof of the income of the victims, the



Supreme Court did not find it proper to apply the minimum wages.

6. This Court has applied the principles laid down in Uphaar tragedy case to compute the compensation in United India Insurance Co. V. Kanwar Lal, 2012 SCC Online Del 2411, New India Assurance Co. Ltd. v. Bal Kishan Pawar, 2012 SCC Online Del 3201, National Insurance Co. Ltd. v. Chander Dutt, 2012 SCC Online Del 2412, National Insurance Co. Ltd. v. Sewa Ram, 2012 SCC Online Del 2413 and National Insurance Co. Ltd. v. Komal, 2014 ACJ 1540, National Insurance Co. Ltd. v. Gaje Singh, 2012 ACJ 2346 and National Insurance Co. Ltd. v. Bhateri, 2012 SCC Online Del 2409.

7. Applying the principles laid down in Uphaar tragedy case, the income of the deceased is presumed to be Rs.5,384.85.....”

In view of the above the Court assumes the income of the deceased to be at least Rs.2,820/- per month i.e. Rs.33,840/- per year. Therefore the computation of compensation on this minimum amount cannot be faulted.

However, apropos issue of multiplier and interest rate, issue notice to R-1 by all modes including dasti returnable on 08.09.2017.

Upon the appellant depositing within three weeks from today the entire Award amount along with interest accrued thereon till the date of deposit before the Tribunal, there shall be a stay on the execution of the Award.

Of the amount so deposited, 80% shall be released to the beneficiary of the award as specified in the impugned order. The balance amounts shall be kept in an interest bearing fixed deposit initially for a period of one year with facility of automatic renewal. Should there be any default in depositing the money, the stay shall stand automatically vacated.

The appellant shall file an affidavit detailing the calculation of the interest at the time of depositing the Award amount.

In the meanwhile, digitized copy of the LCR be summoned in three weeks.

A copy of this order be given dasti to the appellant under the signature of the Court Master.”

13. In view of aforesaid order of this Court, the only issue that confronts this Court now in the instant appeal is the issue of applying



the correct multiplier and interest rate besides compensation awarded to the claimants under non-pecuniary heads. Insofar as the issue of multiplier is concerned, since the deceased Surender Kumar was about 25 years of age at the time of his death and in view of the decision in the case of **National Insurance Company Limited v. Pranay Sethi**⁹, the plea by the learned counsel for the appellant/insurance company is that the multiplier applicable to the age of the dependent mother should have been reckoned, is absolutely untenable in law. As regards award of compensation under the non-pecuniary heads, the compensation awarded on account of loss of love and affection, funeral expenses and loss of estate by the learned Tribunal are *per se* exorbitant, and in view of the decision in the case of **Pranay Sethi (supra)** compensation of Rs.15,000/- each is to be awarded towards funeral expenses and loss of estates, whereas Rs. 40,000/- towards loss of consortium. Accordingly, computing loss of dependency to be Rs. 6,09,120/- plus Rs. 70,000/-, the total compensation works out to be **Rs. 6,79,120/-**. The modified break-up of the compensation is as follows: -

S. No.	HEAD	AMOUNT
1.	Loss of dependency	Rs. 6,09,120/-
2.	Loss of consortium	Rs. 40,000/-
3.	For funeral expense	Rs. 15,000/-
4.	Loss of estate	Rs. 15,000/-
	Total	Rs. 6,79,120/-

⁹ (2017) 16 SCC 680



14. Lastly, as regards award of interest @ 10% per annum is concerned from the date of filing of the compensation i.e. 17.09.2007 till realization, the claim petition was filed on 17.09.2007, and the claim petition came to decided vide impugned judgment-cum-award dated 15.12.2016. It is also recorded as per order dated 17.03.2009 that the petitioner was held not entitled to interest from 03.12.2008 to 17.03.2009. Although no special reasons have been assigned by the learned Tribunal for awarding interest @ 10% per annum, at the same time it is not clear as to why there was an inordinate delay in deciding the claim petition. Anyhow, the learned Trial Court disallowed the interest for a particular period based on the conduct of the claimants and in that view of the matter, this Court is not inclined to interfere in the award of interest, as awarded by the learned Tribunal. Hence, the appeal filed by the claimants bearing MAC. APP. 651/2018 is hereby dismissed.

CROSS-OBJECTIONS BY OBJECTOR/RESPONDENT NO.4

15. Without any further ado, it would be relevant to reproduce the findings recorded by the learned Tribunal in fastening the liability upon joint tortfeasors, which read as under: -

“19. Though it has been argued by Respondent No. 6 that driver of-Scorpio Car was not negligent relying on judgment of Basant Kaur (Supra) and National Insurance Company (Supra) and after considering the facts and records of the case, it is clear that accident took place due to the negligence of both the drivers of the offending vehicles and even FIR 396/06 PS Delhi Cantt. was registered against them. Hence, Respondent No. 1, 2, and Respondent No. 6/ICICI Lombard Ge. Insurance Company Ltd. are liable to pay the compensation amount in 50- 50% ratio. Accordingly, 50% amount of total compensation be paid by Respondent No.1/Driver-Sachin Dev and Respondent No. 2/Owner-Jai Prakash and remaining 50% amount of total compensation be



paid by Respondent No. 6/ICICI Lombard Ge. Insurance Company Ltd. As per R6W1 5h. Gautam Bhatnagar, Manager (Legal) that despite service of Notice U/Or. 12 Rule 8 CPC Respondent No. 3/Shyam Singh failed to supply valid and effective DL. Hence, it is proved that Respondent no.3/Shyam Singh drove the vehicle bearing No. DL-4CR-5655 without valid and effective DL, thereby committing willful breach of the terms and conditions of the policy.

20. Therefore, in the factual matrix of the present case, the theory of "Pay and Recover" would apply. Thus, the insurance company, respondent no. 6/ICICI Lombard Gen. Insurance Company Ltd. shall first make payment of 50% amount of total compensation to the claimant thereafter, can get the same recovered from Respondent No. 3/Driver-cum owner Shyam Singh.

21. In view of the above discussions, issue no. 2 is decided accordingly."

16. Reverting to the challenge by respondent no. 4/Shyam Singh, it is borne out from the digitized record that the objector/ respondent No.4/Shyam Singh was duly served with the notice of the claim petition and he also appeared during the course of proceedings on 17.03.2007, 17.07.2009, 11.11.2009, 10.03.2010 and 15.05.2010. but thereafter, he failed to appear and had been proceeded *ex parte*. Although he filed his written statement before being proceeded *ex parte*, he merely made a bald denial about the factum of the accident and also refuted the there was any rash and negligent act or omission on his part. It is pertinent to mention that there is no averment in the written statement that he was possessing a valid and effective driving license as on the date of accident.

17. On the other hand, it was the specific plea of the appellant/ ICICI Lombard General Insurance Co. Ltd., i.e., the insurer of the offending Scorpio vehicle, that the registered owner/ driver did not



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possess a valid driving license. Since the objector/ respondent No.4/Shyam Singh, not only deliberately failed to appear and contest the proceedings, but also did not produce the driving license on being served with a notice under Order XII Rule 8 of the CPC, this Court cannot grant him any relief. Furthermore, even in the present appeal, although a copy of the driving license is placed on the record, which apparently suggests that he had a driving license to ply LMV (NT) vehicle from 28.05.2004 to 15.03.2007, no effort has been made to press the application under Order XLI Rule 27 of the CPC to lead additional evidence. It is a stark case where the objector/Shyam Singh, has been sleeping over his legal rights for a long time, and therefore, he cannot be allowed to plead at this stage that he was holding a valid and effective driving license. Hence, the objections filed by the appellant objector i.e., the driver-cum-owner bearing MAC. APP. 652/2018 is hereby dismissed.

17. In view of the foregoing discussion, the appeal filed by the appellant/insurance company is partly allowed. The statutory amount of Rs.25,000/- if deposited by the appellant/insurance company, if paid, be released to them forthwith.

18. The pending applications also stand disposed of.

DHARMESH SHARMA, J.

JULY 01, 2024

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