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

Date of Decision: 29th April, 2016

+ **MAC.APP. 77/2014**

NATIONAL INSURANCE CO LTD Appellant

Through: Mr. Pradeep Gaur, Adv.

versus

MEENA KUMARI & ORS Respondents

Through: Mr. Anshuman Bal, Adv. for R-1 to 4

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. By judgment dated 24.10.2013, while allowing accident claim case (suit No.196/10) instituted on 23.09.2010 on the basis of claim petition presented under Sections 166 & 140 of Motor Vehicles Act, 1988 (MV Act) by the first to fifth respondents (the claimants), the motor accident claims tribunal (tribunal) granted compensation in the sum of ₹26,21,800/- with interest, directing the appellant insurance company (insurer) to pay on account of death of Ravi Upadhyay in motor vehicular accident that occurred on 20.08.2010 involving negligent driving of car bearing registration No.DL 3C AU 0853 (offending vehicle), admittedly insured with it for the period in question.

2. The insurer is in appeal stating that the loss of dependency has been wrongly worked out assuming the income of the deceased at ₹12,000/- on the basis of document (Ex.PW1/1) which was not proved in accordance with law, it having been simply tendered in evidence by Bala Devi (PW1) during her testimony on the basis of affidavit.

3. Confronted with the above submissions, the learned counsel for the claimants fairly conceded that the employment and income of the deceased should have been properly proved through evidence including that in the nature of witness summoned from the employer's office with corresponding records. He submits that while the insurance company's appeal may be allowed, the claimants may be given opportunity to adduce further evidence before the tribunal to prove their case in above regard.

4. In view of the above, the impugned judgment is set aside. The matter is remitted for further inquiry, which shall be restricted to calculate the loss of dependency, while also assessing the other heads of damages, before the tribunal, with the claimants being permitted an opportunity to adduce further evidence. Needless to add, the parties which contest shall be entitled to not only cross-examine the additional witnesses of the claimants but also lead evidence in rebuttal, if any.

5. The parties are directed to appear for further inquiry before the tribunal on 31.05.2016.

6. By order dated 24.01.2014, the insurance company had been called upon to deposit 80% of the awarded amount and 60% of the awarded amount was allowed to be released to the claimants, the balance being kept

in fixed deposit receipt with UCO Bank, Delhi High Court branch. The balance kept in fixed deposit receipt shall be presently refunded to the insurance company with statutory deposit, if made. The amount already received by the claimants shall be liable to be adjusted at appropriate stage after the tribunal has passed a fresh award.

7. The appeal is disposed of in above terms.

APRIL 29, 2016
VLD

R.K. GAUBA
(JUDGE)

