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

Date of Decision: 29th February, 2016

+ **MAC.APP. 586/2014**

UNITED INDIA INSURANCE CO LTD Appellant

Through: Mr. Pradeep Gaur & Mr. Amit Gaur,
Adv.

versus

MAMTA JAIN & ORS Respondents

Through: Mr. Om Prakash Gupta, Adv. for R-1.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Priya Jain, then aged 21 years, was going to her office at about 11:30 AM on 23.11.2011 in the area of Preet Vihar, Delhi. She suffered injuries in a motor vehicular accident and died in the consequence. A first information report (FIR) no.337/2011 was registered by local police station Preet Vihar for offences punishable under Sections 279/304-A of Indian Penal Code, 1860 (IPC). Priya Jain was unmarried at the time of her death. Her parents brought a claim petition under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act) before the motor accident claims tribunal (the tribunal) on 19.12.2011 seeking compensation, impleading Delhi Transport Corporation (DTC) as party respondent on the allegations that its bus no.DL-1PB-5436 (hereinafter referred to as “the offending vehicle”) had

caused the said accident due to rash/negligent driving by its driver Govind Lal who was also shown in array as the first respondent in the claim case. The offending vehicle was concededly insured against third party risk for the period in question with the appellant/insurance company (the insurer), which was also arrayed as (third) respondent in the claim petition.

2. It may be added that father of the deceased died during the pendency of the inquiry before the tribunal and the petition was prosecuted further by the surviving claimant (the mother) who is now first respondent in this appeal.

3. The tribunal having registered the claim case as MACT petition no.02/2012 held inquiry and by judgment dated 25.03.2014 awarded compensation in the sum of ₹12,42,288/- with interest at rate of nine percent (9%) per annum from the date of filing the petition till realization holding that the claimants had proved that the accident had been caused due to rash/negligent driving of the offending vehicle. In reaching the said amount of compensation, the tribunal accepted the evidence led, *inter-alia*, through Shweta Joshi (PW2), an Executive (HR) of M/s Unique Infoways Pvt. Ltd. to the effect that the deceased was employed with the said entity as an executive-logistic at a gross remuneration of ₹7500/- per month at the time of the death. While calculating the loss of dependency, the tribunal added the element of prospects of increase in the income in future.

4. The insurance company, feeling aggrieved, has come up by appeal at hand submitting that the findings regarding involvement of the offending vehicle or rash/negligent driving thereof by the second respondent herein are

perverse because the evidence led by the respondents showing that the accident had been caused by some other vehicle was not even considered. The insurance company further argues that, in the case at hand, addition of the element of future prospects was wrong and against the dictum in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, as affirmed later in *Reshma Kumari V. Madan Mohan* (2013) 9 SCC 65.

5. Having heard the learned counsel on both sides, this court finds no substance in either of the contentions raised by the insurer in this appeal.

6. It does appear that the contesting respondents had adduced evidence which included the testimonies of Govind Lal (RW1), Anuj (R1W2) and Ashok Sharma (R1W3). The evidence of Govind Lal (R1W1), the driver of the offending vehicle and that of Anuj (R1W2), conductor deployed by DTC on the same vehicle was meant to show that the bus in question was stationary and that the deceased girl was crossing the road from one side to other without observing the traffic rules. with a mobile phone held against her ear and she was crushed to death by another speeding vehicle. The evidence of Ashok Sharma (R1W3) was relied upon in corroboration, he stated to be a passenger traveling in the offending vehicle at the relevant point of time.

7. This court agrees with the grievances that the tribunal did not even refer to the above mentioned evidence in the impugned judgment while reaching adverse findings. This was not proper. But then, having considered the said evidence now, this court finds that the conclusions of the

tribunal could not have been different from the ones reached even if the evidence of the respondents in the nature aforesaid had been considered.

8. The evidence of HC Surender Pal (PW3) by itself is sufficient to nail the lie in the contentions raised by the party respondents in the claim case before the tribunal. PW3 was a local police official patrolling in the area. He had seen the accident in the course of happening. He affirmed on oath that after collision by the offending vehicle, the deceased had come under its wheels and that it is he, who with the help of others, had taken her out from under the carriage of the vehicle and shifted her to a hospital where she was declared brought dead. The very fact that the girl was found and had to be extricated from under the wheels of the bus shows that the bus was not stationary and that it was moving when the girl was crushed to death. In these circumstances, the theory propounded by the witnesses of the respondents cannot be accepted.

9. Coming to the issue of future prospects, the evidence of PW2 itself shows that though the deceased had been employed on probation initially, her income would have grown in future over the period. In these circumstances, the grievance raised about future prospects is without substance.

10. The appeal is, thus, devoid of substance and liable to be dismissed.

11. By order dated 24.07.2014, the insurance company had been directed to deposit the entire awarded amount with accumulated interest with the Registrar General of this Court within the period specified. Out of said deposit, ₹8,00,000/- was allowed to be released to the claimant (first

respondent), the balance having been kept in FDR for a period of one year to be renewed periodically. The Registrar General shall now take necessary steps to have the balance amount released to the claimant in terms of the impugned judgment.

12. The statutory deposit, if made, shall be refunded.

13. The appeal is disposed of in above terms.

FEBRUARY 29, 2016
ssc

R.K. GAUBA
(JUDGE)

