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

% *Judgment delivered on: 12th February, 2014*

+ MAC.A. 935/2006

UNITED INDIA INSURANCE CO. LTD. Appellant
Represented by: Mr. K.L. Nandwani, Adv.

Versus

RAMPATI DEVI & ORS. Respondents
Represented by: Mr. B.K. Jha, Adv. for R1 to R6.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. Vide the instant appeal appellant / insurance company has assailed the judgment dated 08.09.2006 passed by the Motor Accident Claims Tribunal, whereby the Ld. Tribunal has granted compensation for a sum of Rs.5,18,000/- with interest @ 7.5% per annum from the date of filing of the petition, i.e., 03.08.1999 till realization of the amount.

2. The brief facts of the case are that on 10.09.1998, the deceased Anandi Singh @ Anandi Prasad Singh was travelling in Mini Truck registration No. PB 08L 9636 Tata 407 along with some other workers as they were going from Delhi to Jalandhar. The deceased and other workers had to work in a newly constructed building under the instructions of Shri Suresh Sharma, sub-Contractor, brother of contractor Shri Bhagwan Dass. Above named Shri Suresh Sharma was also accompanying him. The truck

was loaded with stones for construction and was being driven by its driver Harish Kumar. The driver Harish Kumar instructed the workers to sit at the back side. When this mini truck reached at Dur Bin Chawk, Ambala Cantt at about 6.30 AM the driver, Harish Kumar suddenly negligently and rashly applied the brakes without any reason. However, due to sudden brake the deceased lost his balance and fell down and came underneath the stones and got crushed injuries on his face, head, arm, chest and on other parts of his body. He succumbed to the injuries and expired on the spot.

3. Appellant / insurance company has filed the instant appeal mainly on two grounds; firstly that the deceased was a gratuitous passenger in the offending vehicle and therefore, he was not covered under the policy of Insurance. Secondly, the multiplier of 17 has been wrongly applied by the Ld. Tribunal, whereas on the date of accident, deceased was 35 years of age, therefore the multiplier ought to have been applied as 16.

4. On the issue of gratuitous passenger, Ld. Counsel for the appellant / insurance company submitted that the deceased was travelling in offending vehicle, i.e., TATA 407 as a gratuitous passenger, eventually, the deceased was not covered under the policy of insurance. Therefore, the appellant was not liable to pay compensation.

5. The claimants placed on record original cover note Ex.PW3/M, which shows Rs.5,497/- was charged towards premium to cover the legal liability of the insured. The cover note shows that the vehicle was insured from 30.09.1997 to 29.09.1998 which covers the date of accident.

6. In the instant case it is admitted that the offending vehicle was insured

on the date of accident. However, during inquiry before the claims Tribunal, the policy of Insurance was neither produced nor proved.

7. The appellant / insurance company preferred not to produce on record the details of the terms and conditions of the insurance policy, in order to prove the risk of the accident. Moreover, the appellant / insurance company has not examined any witness from the company, who could explain the terms and conditions of the policy.

8. On perusal of the cover note it seems that Rs.45/- was charged for L.L. to persons employed in connection with the operation and or loading, unloading of motor vehicles.

9. Since, the appellant / insurance company was failed to produce the Insurance policy on record and could not lead any evidence in regard to the violations of terms and conditions of the policy, therefore, I do not find any merit on this particular ground. Same is rejected accordingly.

10. On the issue of multiplier, Ld. Counsel has pointed out that on the date of accident; the deceased was about 32 years of age as per Ex.P-5. Despite that, Ld. Tribunal has wrongly applied the multiplier of 17. Ld. Counsel has relied upon the case of *Sarla Verma & Ors. Vs. DTC & Anr., (2009) 6 SCC121*, wherein the Apex Court has held as under:-

“21. We therefore hold that the multiplier to be used should be as mentioned in column (4) of the Table above (prepared by applying Susamma Thomas, Trilok Chandra and Charlie), which starts with an operative multiplier of 18 (for the age groups of 15 to 20 and 21 to 25 years), reduced by one unit for every five years, that is M-17 for 26 to 30 years, M-16 for 31 to 35 years, M-15 for 36 to 40 years, M-14 for 41 to 45 years,

and M-13 for 46 to 50 years, then reduced by two units for every five years, that is, M-11 for 51 to 55 years, M-9 for 56 to 60 years, M-7 for 61 to 65 years and M-5 for 66 to 70 years.”

11. I find force in the submissions made by the Ld. Counsel for the appellant. Accordingly, considering the age and the case relied upon by the appellant, I hold that multiplicand of 16 is applicable in the present case.

12. I order accordingly.

13. Consequently, the modified compensation comes to Rs.5,00,000/-.

14. Vide order dated 24.11.2006, this Court directed the appellant to deposit a sum of Rs.4,00,000/- along with interest @ 7.5% *per annum* with the Ld. Tribunal, and the same was directed to be released to the claimant as per Tribunal's order.

15. Further vide order dated 14.10.2009, the appellant was directed to deposit the remaining award amount along with interest with the UCO Bank, A/c Rampati Devi within 30 days and upon the aforesaid deposit the said Bank was directed to put the same in fixed deposit in the name of Rampati Devi for a period of five years on which monthly interest be paid to her but the original fixed deposit receipt was directed to be retained with the Registrar General of this Court till the disposal of this appeal.

16. In order dated 02.03.2010 it was recorded that the appellant had deposited a sum of Rs.1,17,022/- with the UCO Bank in terms of the order dated 14.10.2009.

17. Since the compensation amount is modified by reducing a sum of Rs.18,000/- (Rs.5,18,000 – Rs.5,00,000), the Branch Manager, UCO Bank, High Court of Delhi is directed to release Rs.18,000/- with proportionate interest accrued thereon in favour of the appellant from the date of filing the petition till the disposal of the appeal.

18. Accordingly, the appeal is partially allowed.

19. Balance compensation amount, if any, be released in favour of the respondent, i.e., Rampati Devi.

20. Statutory amount be released in favour of the appellant.

SURESH KAIT, J.

FEBRUARY 12, 2014

Jg/sb