

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

+ MAC.APP.NO.264/2008

Date of Decision : 21st February, 2011

%

THE ORIENTAL INSURANCE CO. LTD. Appellant
Through : Mr. Pankaj Seth, Adv.

versus

RADHA DEVI & ORS. Respondents
Through : Mr. Sanjeet K. Singh, Adv.
 for R-1 to 7.
 Ms. Manjeet Chawla, Adv.
 for R-9.

CORAM :-
HON'BLE MR. JUSTICE J.R. MIDHA

1. Whether Reporters of Local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

J.R. MIDHA, J. (Oral)

1. The appellant has challenged the award of the learned Tribunal whereby the compensation of ₹19,25,800/- has been awarded to claimants/respondents No.1 to 7.
2. The accident dated 29th October, 1999 resulted in the death of Brahm Pal. The deceased was aged 35 years at the time of the accident and was survived by his mother, widow and five minor children who filed the claim petition before the Claims Tribunal. The deceased was working with Himachal Pradesh Tourism Development Corporation earning ₹5,431/- per month. The learned Tribunal added 50% towards the

future prospects, deducted 1/3rd towards the personal expenses of the deceased and applied the multiplier of 16 to compute the loss of dependency at ₹19,00,800/-. ₹15,000/- has been awarded towards loss of consortium and ₹10,000/- towards funeral expenses. The total compensation awarded is ₹19,25,800/.

3. The learned counsel for the appellant has urged the following two grounds at the time of hearing of this appeal:-

- (i) The driver of the offending vehicle was not holding a valid driving licence at the time of the accident and, therefore, the appellant is not liable.
- (ii) There is an error of calculation in para 8 of the award and the Claims Tribunal has taken the annual loss of dependency as ₹1,18,800/- instead of ₹64,800/-.

4. Learned counsel for the appellant submits that the driver of the offending vehicle was not holding a valid driving licence at the time of the accident and, therefore, the appellant is not liable to pay the compensation to the claimants. However, the appellant did not lead any evidence in this regard before the Claims Tribunal. The Claims Tribunal has rejected the defence of the appellant on the ground that the appellant did not lead any evidence to prove that the driver of the offending vehicle was not holding a valid driving licence. Respondent No.9 is the owner of the offending vehicle who has filed the counter affidavit dated 8th August, 2008. Along with the counter

affidavit, respondent No.9 has filed the certified copy of the driving licence of the driver of the offending vehicle which was seized by the police and is lying with the Court dealing with the criminal case. In that view of the matter, the finding of the Claims Tribunal does not warrant any interference.

5. The learned counsel for the appellant next submits that the Claims Tribunal has taken the annual loss of dependency at ₹1,18,800/- instead of ₹64,800/-. It is submitted that the annual income of the deceased should be taken as ₹64,800/- instead of ₹1,18,800/-. The learned counsel for claimants/respondents No.1 to 7 admits that there is an error of calculation in para 8 of the award. However, it is submitted that the Claims Tribunal has erred in deducting 1/3rd towards personal expenses instead of 1/5th in terms of the judgment of the Hon'ble Supreme Court in the case of Sarla Verma Vs. Delhi Transport Corporation, 2009 (6) Scale 129. It is submitted that the annual loss of dependency of the claimants should be taken as ₹78,206.40. It is further submitted that the Claims Tribunal has not awarded any compensation for loss of estate and loss of love and affection. It is further submitted that the Claims Tribunal has erred in awarding interest @7% per annum instead of 9% per annum in terms of the judgment of the Hon'ble Supreme Court in the case of Kaushnuma Begum vs. New India Assurance Co. Ltd., (2001) 2 SCC 9.

6. The salary of the deceased at the time of death was ₹5,431/- per month. The deceased was aged 35 years at the time of the accident and, therefore, 50% has to be added towards future prospects. The income of the deceased after adding the future prospects is computed to be ₹8,146.50 (₹5,431 + 50% of ₹5,431). The annual income of the deceased is computed to be ₹97,758/-. The Claims Tribunal has deducted 1/3rd towards the personal expenses of the deceased whereas the deceased has left behind seven legal representatives and, therefore, 1/5th is to be deducted towards personal expenses of the deceased in terms of the judgment of the Hon'ble Supreme Court in the case of Sarla Verma Vs. Delhi Transport Corporation (supra). The annual loss of dependency is computed to be ₹78,206.4 (₹97,758 – 1/4th of ₹97,758). The deceased was aged 35 years at the time of the accident and the appropriate multiplier according to the judgment of Hon'ble Supreme Court in the case of Sarla Verma (supra) is 16. Applying the multiplier of 16, the loss of dependency is computed to be ₹12,51,302.40.

7. The Claims Tribunal has awarded ₹15,000/- towards loss of consortium and ₹10,000/- towards funeral expenses which is upheld. However, no compensation has been awarded towards loss of love and affection and loss of estate. ₹10,000/- is awarded towards loss of love and affection and ₹10,000/- is awarded towards loss of estate. The claimants are entitled to total of ₹12,96,302.40 (₹12,51,302.40 + ₹15,000 + ₹10,000 +

₹10,000 + ₹10,000). The break-up of ₹12,96,302.40 is as under:-

Compensation towards loss of dependency	: ₹12,51,302.40
Compensation towards loss of consortium	: ₹15,000/-
Compensation towards loss of love and affection	: ₹10,000/-
Compensation towards loss of estate	: ₹10,000/-
Compensation towards funeral expenses	: ₹10,000/-
Total	: ₹12,96,302.40

8. The appeal as well as cross-objections are allowed and the award amount is reduced from ₹19,25,800/- to ₹12,96,302.40. The Claims Tribunal has awarded interest at the rate of 7% per annum. This case relates to the accident dated 29th October, 1999 and, therefore, the rate of interest is enhanced from 7% per annum to 9% per annum.

9. The appellant has deposited a sum of ₹20,26,411/- with the Registrar General of this Court in terms of order dated 25th April, 2008 out of which 40% of the amount has been released to the claimants and the remaining 60% has been kept in the fixed deposit in terms of order dated 12th November, 2010. The Accounts Department of this Court has done the calculation according to which the appellant is liable to deposit a sum of ₹51,840.40. The break-up of ₹51,840.40 is as under:-

Principal award amount	:	₹12,96,302.40
Interest up to 16 th August, 2008	:	₹8,06,949.00
Total	:	<u>₹21,03,251.40</u>
<i>Less</i> : Amount deposited by the appellant on 16 th August, 2008	:	<u>₹20,51,411.00</u>
Balance payable by the Appellant	:	<u>₹51,840.40</u>

10. The appellant is directed to deposit a sum of ₹51,840.40 with State Bank of India, Tis Hazari Branch A/c Radha Devi within two weeks. Upon the said amount being deposited, the State Bank of India is directed to release the said amount to respondent No.1 without any restriction of FDR.
11. List for reporting compliance on 8th April, 2011.
12. Copy of this order be given 'Dasti' to learned counsel for the parties under signature of Court Master.

J.R. MIDHA, J

FEBRUARY 21, 2011

aj