

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

Date of decision: 5th November, 2012

+ **MAC. APP. 458/2012**

ORIENTAL INSURANCE COMPANY LTD. Appellant

Through: Mr. Tarkeshwar Nath, Adv. with
Mr. Saurabh Kumar Tuteja, Adv.

versus

DEVI DASS & ORS. Respondents

Through: Mr. R.S. Rai, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Appeal is for reduction of compensation of ₹1,00,000/- awarded for the death of Kailash, a young boy aged 22 years. The First Respondent Devi Dass who filed this Claim Petition is the uncle of the deceased. The First Respondent got the deceased's name entered in his ration card (Ex.PW-1/1) only on 29.08.2011, that is, after the accident and death on 06.12.2011. It was proved that the deceased was not residing with the First Respondent.
2. Motor Accident Claims Tribunal (the Claims Tribunal) in the absence of any evidence with regard to Kailash's income took the minimum wages of an unskilled worker, applied the multiplier of 7 (as per the age of respondent No.1) and awarded a sum of ₹89,908/- towards loss to estate and ₹10,000/- as funeral expenses.

3. It is borne out from the MLC as well as from the death certificate that deceased Kailash was a resident of House No.57, Gali No.4, Jyoti Nursing Home, Runga Puri, Delhi whereas the First Respondent was resident of House No.276, Gali No.6, Durga Puri, Delhi. The First Respondent tried to build up a case that deceased Kailash was staying with him as a member of his family. The Claimant was not financially dependent on the deceased and the deceased was not earning any sum which he would have saved for his uncle. The First Respondent of course was a legal representative of the deceased and was, therefore, entitled to the compensation of ₹50,000/- on *no fault liability* under Section 140 of the Motor Vehicles Act, 1988 (the Act). (*Smt. Manjuri Bera v. The Oriental Insurance Company Ltd. & Anr.*, AIR 2007 SC 1474). The said compensation of ₹50,000/- shall be treated as loss to estate and funeral expenses.
4. The compensation thus stands reduced to ₹50,000/- which shall carry interest @ 7.5% per annum from the date of filing of the Petition till its payment as granted by the Claims Tribunal.
5. The compensation granted shall be released in favour of the First Respondent.
6. The excess amount of ₹50,000/- along with proportionate interest shall be refunded to the Appellant Insurance Company.
7. The statutory deposit of ₹25,000/- shall be refunded to the Appellant Insurance Company.
8. The Appeal is allowed in above terms.

9. Deficiency of ₹488/- in the Court fees shall be made up by the First Respondent.
10. Pending Applications also stand disposed of.

(G.P. MITTAL)
JUDGE

NOVEMBER 05, 2012
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