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

% *Judgment delivered on: 1st August, 2013*

+ **MAC.APP. 266/2013**

NAROLA & OTRS. Appellants

Through: Mr. Anshuman Bal, Advocate.

Versus

IFFCO TOKIO INS. & OTRS. Respondents

Through: Mr. R.K.Raizada for Ms.Suman
Bagga, Advocate for Respondent
No.1.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. The present appeal is for enhancement of the compensation amount of Rs.2,90,000/- which was awarded by the learned Tribunal in Suit No. 50/11 passed in a claim petition preferred under Section 163-A of the Motor Vehicles Act, 1988(the Act).

2. The only ground of challenge raised by the learned counsel for the appellants is that though the claim petition was filed by the appellants/claimants U/s 163-A of the Act, however, the learned Tribunal has granted compensation as per Section 166 of the Act and that the multiplier has to be applied as per the age of the deceased and not as per the age of the claimant.

3. In view of the above, the present case is covered by a judgment of this Court in *New India Assurance Co. Ltd. Vs. Pitamber & Ors.*, (MAC.APP.304/2009) decided on 23.01.2012. This Court referred to the decision in *Oriental Insurance Company Limited Vs. Smt. Pataso & Ors.*, MAC APP.962/2005 decided on 01.09.2008; *Oriental Insurance Company Limited Vs. Om Prakash & Ors.*, 1 (2009) ACC 148; *Jagdish & Anr. Vs. Madhav Raj Mishra and Anr.* MAC APP.190/2011 decided on 19.04.2011; and *Oriental Insurance Company Limited Vs. Anita Devi & Ors.*, 2001 (5) AD (Delhi) 138, decided on 10.05.2011; *Oriental Insurance Company Vs. Hansrajhai Vs. Kodala*, (2001) 5 SCC 175; and *Deepal Girishbhai Soni Vs. United India Insurance Company Limited*, (2004) 5 SCC 385; and held that in a petition under Section 163-A of the Act there is a cap of Rs.40,000/- on the annual income and the compensation including non-pecuniary damages have to be awarded as per the Second Schedule.

4. Hence, the loss of dependency comes to Rs.4,53,333/-(Rs.40,000/- X $\frac{2}{3}$ X 17).

5. The compensation awarded towards funeral expenses as Rs.10,000/- is not consistence with the Second Schedule. Therefore, the Appellants are entitled to a sum of Rs.2,000/- towards funeral expenses. Since the present appeal is being decided U/s 163-A of the Act, therefore, appellants are also entitled for compensation of Rs.2,500/- towards loss of Estate. I grant accordingly.

6. In view of the above, the overall compensation comes to Rs.4,57,833/-.

7. The enhanced compensation of Rs.1,67,833/- (Rs.4,57,833 – Rs.2,90,000) shall carry interest @ 9% per annum from the date of the filing of the petition till its payment.

8. The Respondent No.1/National Insurance Company Ltd. is directed to deposit the enhanced amount of Rs.1,67,833/- along with interest with the Registrar General of this Court within six weeks from today. On deposit, the enhanced compensation shall be released in favour of the claimants.

9. The Appeal is allowed in above terms.

SURESH KAIT, J.

AUGUST 01, 2013
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