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

% *Judgment delivered on: 13th November, 2013*

+ **MAC.APP. No.414/2012**

ORIENTAL INSURANCE CO. LTD. Appellant

Represented by: Mr.Amit Gaur and Mr. Pradeep
Gaur, Advocates.

Versus

SHANTI & ORS. Respondents

Represented by: Mr.S.N.Parashar, Advocate
for Respondent Nos.1 to 7.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. The present appeal is directed against the impugned award dated 18.02.2012, whereby the learned Tribunal has granted compensation as under:-

"a)	Loss of dependency	:	Rs.13,00,000/-
b)	Funeral charges	:	Rs. 10,000/-
c)	Loss of consortium	:	Rs. 10,000/-
d)	Loss of love and affection etc.	:	Rs. 1,00,000/-

Total :			Rs.14,20,000/-"

Interest at the rate of 7.5% *per annum* was also awarded on the total compensation amount from the date of filing of the petition till realization of the amount.

2. Firstly, the learned counsel appearing on behalf of the appellant/ Insurance Company has argued that while deciding the claim petition, the

learned Tribunal has awarded a sum of Rs.50,000/- as counsel fee. He submitted that similar issue came up before this Court in the case of **ICICI Lombard General Insurance Co. Ltd. Vs. Kanti Devi & Ors.**, decided on 30.07.2012, wherein held that the order directing payment of counsel's fee was illegal and consequently the said order qua the counsel fee was set aside.

3. Learned counsel for the respondent Nos.1 to 7/claimants submitted that he has no objection if the counsel fee is deducted from the awarded amount.

4. Secondly, the learned counsel for the appellant/Insurance Company has argued that on the date of the accident, the deceased has crossed the age of 50 years. Despite, the learned Tribunal has added 30% towards future prospects.

5. To strengthen his arguments, he has relied upon a case of **Rajesh & Ors. Vs. Rajbir Singh & Ors., 2013 (6) SCALE 563**, wherein the Apex Court in para 12 has observed as under:-

“12. In Sarla Verma's case (supra), it has been stated that in the case of those above 50 years, there shall be no addition. Having regard to the fact that in the case of those self-employed or on fixed wages, where there is normally no age of superannuation, we are of the view that it will only be just and equitable to provide an addition of 15% in the case where the victim is between the age group of 50 to 60 years so as to make the compensation just, equitable, fair and reasonable. There shall normally be no addition thereafter.”

6. Also relied upon a case bearing MAC. APP. No.1074/2012 titled as “**United India Assurance Co. Ltd. Vs. Raju Saw & Ors**”, decided by this Court on 26.09.2013. The relevant portion of the same reads as under:-

*“10. As the issue of future prospects is concerned, recently the Apex Court in the case of **Rajesh (Supra)** has held that up to 40 years of age, 50% future prospects should be granted. Thereafter from 40 to 50 years it should be 30% and from 50 to 60 years it should be 15%.”*

7. Learned counsel submitted that keeping the age of the deceased into view, the learned Tribunal should have added 15% towards future prospects instead of 30%.

8. On the other hand, on this issue, learned counsel for the respondents/claimants has submitted that as per the dictum of **Rajesh & Ors. (supra)**, for the age group of 40 to 50 years, 30% should be granted towards future prospects and for 50 to 60 years, it should be 15%. He submitted that the deceased was aged 50 years and 4 days, therefore, the learned Tribunal has rightly granted 30% towards future prospects in favour of the claimants.

9. To strengthen his arguments, the learned counsel has relied upon a case bearing MAC. APP. No. 1061/2011 titled as ‘**Bajaj Allianz General Insurance Co. Ltd. Vs. Meenakshi & Ors.**’, decided on 30.05.2012 by this Court. Relevant portion of the same reads as under:-

“9. It is not disputed that the deceased was in permanent employment with Deen Bandhu Chhotu Ram University of Science & Technology, Murthal (Sonapat). As per Sarla Verma

(supra) the legal representatives were entitled to the addition of 50% towards the future prospects when the age was below 40 years and 30% when the age was between 40-50 years. Since the deceased had crossed the limit of 50 years by a few months and considering the peculiar circumstances of the case, it would be appropriate to grant benefit towards future prospects to the extent of 20% only.”

10. Last ground, learned counsel for the appellant/Insurance Company has argued that though recovery rights have been granted by the learned Tribunal against the respondent No.8/owner of the offending vehicle as there was no permit of the same. However, learned Tribunal ought to have granted recovery rights against the respondent No.9/driver of the offending vehicle as his driving licence has not been proved on record.

11. I have heard the learned counsel for the parties.

12. So far as the issue of counsel fee is concerned, keeping in view the dictum of ***Kanti Devi*** (*supra*), impugned order dated 18.02.2012 qua the counsel fee is set aside.

13. In ***Meenakshi & Ors.*** (*supra*), taking into view the age of the deceased, i.e., 50 years and 8 months and considering the peculiar circumstances of that case, this Court has granted 20% towards future prospects.

14. In the present case, the deceased comes in the age group of 40 to 50 years as he had crossed only four days above 50 years. For awarding just compensation, which is fair and equitable in the facts and circumstances of this case, he cannot be put in the age group of 50 to 60 years.

15. Therefore, keeping in view the dictum of *Rajesh & Ors. (supra)*, and the view taken by this Court in case of *Meenakshi & Ors. (supra)* and on considering the age of the deceased, I do not find any discrepancy in awarding 30% towards future prospects by the learned Tribunal

16. As the issue of recovery rights is concerned, on perusal of the record, it is revealed that Bal Krishan, Junior Assistant, Officer of Registering & Licensing Authority, Solan, Himachal Pradesh was examined on behalf of the appellant/Insurance Company as R2W3. He brought the driving licence register for the year 1993 bearing serial No. 1 to 334 and proved the entry at serial No. 239 as Ex.R2W3/A, whereby the driving licence was issued to Shri Pal Singh, respondent No.9 on 12.04.1993 authorising him to drive the LMV (N/T). Accordingly, the licence was valid till 11.04.1998.

17. However, in the cross-examination, the above noted witness has stated that if the driver wants to get his driving licence renewed from any other authority within the State or outside the State, then he is required to obtain NOC from the concerned Authority, which had issued the licence for the first time.

18. It is pertinent to note that neither NOC Register was produced nor any witness to this effect was examined on behalf of the appellant/Insurance Company.

19. Since the appellant/Insurance Company was failed to establish that the driving licence of respondent No.9 was not valid at the time of the accident, therefore, in my considered opinion, the learned Tribunal has rightly not granted recovery rights qua the driving licence.

20. Vide order dated 20.04.2011², while granting stay, this Court directed the appellant/Insurance Company to deposit the entire awarded amount alongwith upto date interest with the Registrar General of this Court. On deposit, 80% of the award amount was also directed to be released in favour of the respondent Nos.1 to 7/claimants.

21. Consequently, the Registrar General of this Court is directed to release the balance compensation amount along with upto date interest accrued thereon in terms of order dated 18.02.2012 passed by learned Tribunal in favour of the respondent Nos. 1 to 7/claimants on taking necessary steps by them.

22. Since, order dated 18.02.2012 has been set aside qua the counsel fee, therefore, the Registrar General of this Court is directed to release the said amount of Rs.50,000/- with interest accrued thereon and the statutory amount as well in favour of the appellant/Insurance Company.

23. In view of the above, the appeal is partially allowed.

SURESH KAIT, J.

NOVEMBER 13, 2013
Sb/RS