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

% *Judgment delivered on: 25th July, 2013*

+ **MAC.APP. No. 622/2012**

ORIENTAL INSURANCE CO. LTD. Appellant

Through: Mr. Pradeep Gaur, Advocate.

Versus

SHASHI BALA & ORS. Respondents

Through: Mr. Vishal Soni and
Mr. Gurmeet Singh, Advocates for Respondent
Nos. 1 to 6.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

MAC.APP. No. 622/2012

1. The present appeal has been preferred against the impugned award dated 27.03.2012, whereby the learned Tribunal while awarding compensation has granted 50% towards future prospects.

2. Learned counsel appearing on behalf of the appellant/Insurance Company submits that at the time of the accident, the age of the deceased was 42 years, therefore, in view of the dictums of ***Reshma Kumari & Ors. Vs. Madan Mohan & Anr.*** delivered in ***Civil Appeal No. 4646 of 2009*** on 02.04.2013 and ***Rajesh & Ors. Vs. Rajbir Singh, 2013 (6) SCALE 563***, maximum 30% should have been given towards future prospects.

3. Learned counsel appearing on behalf of the respondent Nos. 1 to 6/claimants does not dispute the legal position and submits that if the future prospects is reduced from 50% to 30% he has no objection.

4. In view of the above, the future prospects are reduced from 50% to 30%.

5. Learned counsel for the appellant/Insurance Company submits that in the claim petition, though the claimants have claimed salary of the deceased as Rs.10,000/-per month, whereas the learned Tribunal has considered the same as Rs.17,668/- per month.

6. However, perusal of the record reveals that PW3 Bihari Lal proved the salary certificate Ex.PW3/1 issued by the Depot Manager, Dilshad Garden, Delhi. As per the said salary certificate, the total salary of the deceased Rakesh Kumar was Rs.17,668/- per month. Therefore, I do not find any substance in the submission of the learned counsel for the appellant/Insurance Company.

7. Learned counsel for the respondent Nos. 1 to 6/claimants submits though the claimants have not filed any cross-appeal to the award dated 27.03.2012, but this Court has the power to award just and proper compensation as the learned Tribunal has granted non-pecuniary damages at a very lower side. Only Rs.5,000/- towards funeral expenses and Rs.10,000/- each on account of loss of love and affection and loss of estate have been granted by the learned Tribunal.

8. Learned counsel for the respondent Nos. 1 to 6/claimants further submits that whereas keeping in view the dictum of **Rajesh Kumar** (*supra*), the learned Tribunal should be granted Rs.25,000/- towards funeral

expenses and Rs.1,00,000/- each towards loss of love and affection and loss of estate.

9. I find force in the submissionS of the learned counsel for the respondent Nos. 1 to 6/claimants.

10. Therefore, in view of the above submissions and keeping in mind the dictum of **Rajesh Kumar** (*supra*), the compensation amount would be as under:-

Compensation on account of Loss of Dependency	Rs.28,72,674/-
Funeral expenses	Rs. 25,000/-
On account of Loss of Love & Affection	Rs. 1,00,000/-
On account of contribution towards Loss of Estate	Rs. 1,00,000/-
Total	----- Rs.30,97,674/- -----

In view of the above, the compensation amount is reduced from Rs.33,14,640/- to Rs.30,97,674/-.

11. Thus, the claimants/respondents are entitled for an amount of Rs.30,97,674/- as compensation along with interest @ 7.5 % per annum from the date of filing of the petition till realization.

12. Vide order dated 30.05.2012, execution of the impugned award was stayed subject to deposit of 80% of the award amount alongwith up to date interest with the UCO Bank, High Court of Delhi, New Delhi. It was further

directed to release 50% of the award amount in favour of the respondent Nos. 1 to 6/claimants in terms of the order passed by the Claims Tribunal.

13. Accordingly, the appellant/Insurance Company is directed to deposit the balance amount, if any, with the Registrar General of this Court within four weeks from the date of receipt of this order.

14. Thereafter, Registrar General shall deposit the said amount with UCO Bank, Delhi High Branch, New Delhi.

15. The Manager, UCO Bank, Delhi High Court Branch is directed to release the balance compensation amount with up-to-date interest in favour of the respondents/claimants in terms of the award dated 27.03.2012 passed by the learned Tribunal.

16. The Registry of this Court is directed to release the statutory amount, if any, in favour of the appellant/Insurance Company.

17. The instant appeal is disposed of in the above terms.

CM No. 10228/2012 (for stay)

With the disposal of the appeal itself, the instant application has become *infructuous*. The same is disposed of accordingly.

SURESH KAIT, J.

JULY 25, 2013

Sb/jg/RS