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

% *Judgment delivered on: 8th May, 2013*

+ **MAC.A. 739/2012**

ORIENTAL INSURANCE CO LTD.

..... Appellant

Through: Mr. A.K. Soni, Adv.

versus

REKHA & ORS.

..... Respondents

Through: Ms. Pooja Goel, Adv. for
R1 to R5.

CORAM:

HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Instant appeal has been preferred against the judgment dated 04.04.2012 whereby Id. Tribunal has awarded a compensation of a sum of Rs.11,33,200/- in favour of the respondents / claimants.

2. Ld. Counsel appearing on behalf of the appellant has argued the only ground that the deceased was of the age of 42 years and the Id. Tribunal has granted 50% towards future prospects whereas as per dictum of apex court in case of *Santosh Devi v. National Insurance Co. Ltd. & Ors. 2012 (6) SCC 421* which has been affirmed in case of *Rajesh and Ors. v. Rajbir Singh and Ors. 2013 (6) Scale 563*, the future prospects should have been 30% in view of the age of the deceased. He has prayed to reduce the future prospects from 50% to 30% and allow the appeal.

3. On the other hand, Id. Counsel appearing on behalf of respondents /

claimants submits that though they have not filed cross-objection, however this court has power to consider the legal submission to give just compensation in favour of the respondents / claimants.

4. It is further submitted that while calculating the monthly income, the Id. Tribunal has considered minimum wages for non-matriculate person prevalent at that time, whereas, the Id. Tribunal should have considered Rs.6,448/- applicable on skilled person.

5. She argued that there are five dependants, i.e., wife, marriageable daughter, son and old parents. However, the Id. Tribunal has deducted 1/4th towards personal expenses, whereas it should have been 1/5th, keeping in view the facts and circumstances of the present case.

6. Ld. Counsel further submits that deceased was a TSR driver and that has been proved by wife of the deceased in her statement. To this effect she has produced driving license / badge as Ex.PW1/5, which proves that he was having a driving license and badge issued by the state Authorities to drive the TSR. Moreover, on this aspect there is no cross-examination on behalf of the appellant. Therefore, the salary on minimum wages for a skilled person to be taken into consideration.

7. Also submits that the compensation amount on account of loss of consortium and funeral expenses is on the lower side. Further pointed out that the compensation on account of love and affection has not been granted by the Id. Tribunal.

8. I heard Id. Counsels for the parties.

9. So far as the issue on increase of future prospects is concerned, law has been settled in *Santosh Devi (Supra)* which has been affirmed in case of *Rajesh & Ors. (Supra)*. Therefore, keeping in view the 42 years of age of the deceased, i.e., between 40 to 50 years at the time of accident, I reduce compensation towards future prospects from 50% to 30%.

10. So far as the 1/4th deduction towards personal expenses is concerned, I do not find any force in the submission of Id. Counsel for the respondents / claimants. In the present case, dependants are 5. Therefore, I find no discrepancy in the order of Id. Tribunal on this issue.

11. So far as the issue regarding the minimum wages for skilled persons is concerned, PW1 wife of the deceased has specifically stated in her statement that her husband was plying TSR, and to this effect she has produced the driving licence and badge as Ex.PW1/5. Moreover, there is no cross-examination with respect to the skill of the deceased driver. Hence, for just compensation, the minimum wages to be taken as Rs.6,448/- for the year 2010 for a skilled person is the correct factor for assessing the compensation.

12. Thus, the monthly income of the deceased is taken as Rs.6,448/-. The future prospects would be 30% of Rs.6,448/-, i.e. Rs.1934/-. Therefore, the monthly income of the deceased comes to Rs.8,382/-. Considering the number of dependants, 1/4th deduction is made towards the personal expenses of the deceased. Accordingly, the monthly income of the deceased is assessed as Rs.6,286/-. Resultantly, the compensation amount on account of loss of dependency comes to Rs.10,56,048/- (Rs.6286x12x14).

13. Regarding the compensation on account of loss of consortium, loss of love, care and guidance, funeral expenses, recently the apex court in **Rajesh & Ors. (Supra)** has held as under:

“The ratio of a decision of this court on a legal issue is a precedent. But an observation made by this court, mainly to achieve uniformity and consistency on a socio-economic issue, as contrasted from a legal principle, though a precedent, can be, and in fact ought to be periodically revisited, as observed in Santosh Devi (Supra). We may therefore, revisit the practice of awarding compensation under conventional heads: loss of consortium to the spouse, loss of love, care and guidance to children and funeral expenses. It may be noted that the sum of Rs.2,500/- to Rs.10,000/- in those heads was fixed several decades ago and having regard to inflation factor, the same needs to be increased. In Sarla Verma’s case (supra), it was held that compensation for loss of consortium should be in the range of Rs.5,000/- to Rs.10,000/-. In legal parlance, ‘consortium’ is the right of the spouse to the company, care, help, comfort, guidance, society, solace, affection and sexual relations with his or her mate. That non-pecuniary head of damages has not been properly understood by our Courts. The loss of companionship, love, care and protection, etc., the spouse is entitled to get, has to be compensated appropriately. The concept of non-pecuniary damage for loss of consortium is one of the major heads of award of compensation in other parts of the world more particularly in the United States of America, Australia, etc. English Courts have also recognized the right of a spouse to get compensation even during the period of temporary disablement. By loss of consortium, the courts have made an attempt to compensate the loss of spouse’s affection, comfort, solace, companionship, society, assistance, protection care and sexual relations during the future years. Unlike the compensation awarded in other countries and other jurisdictions, since the legal heirs are otherwise adequately compensated for the pecuniary loss, it would not be proper to award a major amount under this head. Hence, we are of the

view that it would only be just and reasonable that the courts award at least rupees one lakh for loss of consortium.

We may also take judicial notice of the fact that the Tribunals have been quite frugal with regard to award of compensation under the head 'Funeral Expenses'. The 'Price Index', it is a fact has gone up in that regard also. The head 'Funeral Expenses' does not mean the fee paid in the crematorium or fee paid for the use of space in the cemetery. There are many other expenses in connection with funeral and, if the deceased is follower of any particular religion, there are several religious practices and conventions pursuant to death in a family. All those are quite expensive. Therefore, we are of the view that it will be just, fair and equitable, under the head of 'Funeral Expenses', in the absence of evidence to the contrary for higher expenses to award at least an amount of Rs.25,000/-."

14. Therefore, in view of the above, respondents / claimants are entitled to get compensation of Rs.1,00,000, Rs.1,00,000 and Rs.25,000/- respectively.
15. Accordingly, the total compensation is granted of Rs.12,81,048/-.
16. In view of the above, the amount of compensation is modified and enhanced to a sum of Rs.1,47,848/- (Rs.12,81,048 – Rs.11,33,200).
17. Thus, the respondents / claimants are entitled to get the enhanced amount with interest @ 7.5% from the date filing of the petition till the date of payment.
18. The appellant / insurance company is directed to deposit the enhanced amount with Registrar General of this court within four weeks from the date of receipt of this order, failing which the appellant shall be liable to pay interest @ 12% on delayed payment.

19. On deposit, the Registrar General is directed to keep the same in the form of FDR for a period of three years as per the ratio specified in the award. No loan, advance or withdrawal shall be allowed on the said FDR without the permission of this court.

20. Branch Manager, UCO Bank, Delhi High Court Branch is directed to release the balance award amount as per the terms and conditions fixed by the Id. Tribunal.

21. Registry of this court is directed to release the statutory amount in favour of the appellant on receiving the enhanced amount.

22. In view of the above instant appal is disposed of with no order as to costs.

CM. No. 11948/2012 (Stay)

In view of the above, instant application has become infructuous and disposed of as such.

SURESH KAIT, J

MAY 08, 2013

Jg