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

% *Judgment delivered on: 3rd April, 2014*

+ MAC.APP. 170/2013

THE ORIENTAL INSURANCE CO LTD Appellant
Represented by: Mr. A.K. Soni, Adv.

Versus

KANCHAN SETH AND ORS Respondents
Represented by: Mr. S. Satyanarayan, Adv.
for R1 to R5.
Mr. Nishant Kr. Srivastava, Adv. for R6.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. The present appeal has been preferred against the impugned award dated 27.11.2012, whereby Ld. Tribunal has awarded compensation for an amount of Rs.40,09,436/- with interest @ 7.5% *per annum* from the date of filing of the Claim Petition till realization of the amount.

2. Mr. A.K. Soni, Ld. Counsel appearing on behalf of the appellant submits that a cheque issued by the owner of the offending vehicle towards premium of cover note got dishonoured and an information in this regard was sent to the owner of the offending vehicle. Despite, the Ld. Tribunal has not exonerated the appellant from the liability to pay the compensation.

3. It is further submitted by the counsel for the appellant that subsequent to the cover note, the insurance policy was issued and by sending the notice to the owner of the offending vehicle, the said insurance policy was cancelled.
4. Mr. Soni, admitted that recovery rights were granted in favour of the appellant and against the driver and owner of the offending vehicle.
5. On the other hand, Mr. S.Satyanarayan, Ld. Counsel appearing on behalf of respondent nos. 1 to 3 submits that the appellate court has to see whether the Tribunal has granted just and fair compensation and if it is not, this court has power to enhance the same.
6. I have heard Id. Counsels for the parties.
7. As far as the issue of dishonoured of cheque is concerned, this issue has been decided by this court in the case bearing **MAC.APP. No. 495/2010**, titled as '**Usha Aggarwal v. Pramod Kr. Gupta and ors.**', decided on 27.11.2013 wherein it is held as under:

15. Admittedly, the cheque was issued by the respondent No.2 Raju Gupta, i.e., the owner of the offending vehicle on 15.03.2001 for issuance of cover note. Accordingly, the respondent No. 3 issued cover note in favour of the respondent No. 2. Thereafter, on the cheque being dishonoured, the respondent No. 3 Insurance Company sent notice dated 28.03.2013 by cancelling the said cover note.

16. The question before this Court for consideration is whether the cover note once issued and thereafter on the cheque being dishonoured, the said cover note continued in force as the third party risk is concerned.

17. The similar issue came before the High Court of Kerela in the case of **Sivankutty and others (Supra)** wherein the Court held that the liability of the Insurance Company in damages for third party risks continues for the entire period covered by the policy in spite of the cheque issued towards payment of premium was dishonoured and consequently policy was cancelled by the Insurance Company. The remedy of the Insurance Company lies against the "insured" to have the amount paid by them by way of compensation for third party risks to be got reimbursed.

18. Moreover, in the case of **Inderjit Kaur and others (Supra)** the Apex Court held that despite the bar created by Section 64VB of the Insurance Act, the appellant, an authorized insurer, issued a policy of insurance to cover the bus without receiving the premium. By reason of the provisions of Section 147(5) and 149(1) of the Motor Vehicles Act, the appellant became liable to indemnify third parties in respect of the liability which that policy covered and to satisfy awards of compensation in respect thereof notwithstanding its entitlement to avoid or cancel the policy for the reason that the cheque issued in payment of the premium thereon had not been honoured.

19. In view of the above, the respondent No. 3 Insurance Company cannot be absolved of its obligation to third parties under the policy because it did not receive the premium. It has remedies in this behalf lay against the insured. It was the Insurance Company itself who was responsible for its predicament. It had issued the policy of insurance upon receipt of a cheque towards the premium in contravention of the provisions of Section 64 VB of the Insurance Act. A policy of insurance being a public interest concept prevails over the interests of the Insurance Company.

20. The Ld. Tribunal has wrongly exonerated Respondent No.3 Insurance Company from the liability and directed respondents no. 1 and 2 to pay the compensation. Ld. Tribunal has not considered the settled law regarding the statutory

liability of the insurance company which is also envisaged as per the provisions of Motor Vehicles Act, 1988.

8. The present case is squarely covered by the above-noted case. Therefore, I do not find any merit on this issue.

9. So far as the issue of enhancement of compensation amount is concerned, though, the claimants have neither filed any cross appeal nor filed any reply to the instant appeal, however, this court has to see whether the compensation granted by the Ld. Tribunal is just and fair.

10. On perusal of the trial court record, it is revealed that deceased died at the age of 46 years. He was working as a Manager in Ashoka County Resort and was earning Rs.30,100/- per month. He left behind widow wife and two minor sons. The wife of deceased lost the association of her husband, the children lost the love and affection and guidance of their father. Despite, Ld. Tribunal has only added 20% in his actual income towards future prospects contrary to the settled law.

11. The issue of future prospects has been dealt by this court in the case bearing MACA No.846/2011 titled as ***ICICI Lombard General Insurance Co. Ltd. Vs. Angrej Singh & Ors.***, decided on 30.09.2013 while relying upon the dictum of ***Rajesh and Ors. Vs. Rajbir Singh and Ors. 2013 (6) SCALE 563.***

12. Keeping in view the age of the deceased on the date of accident and the dependents left behind, I add 30% in his actual income towards future prospects. I also award Rs.1,00,000/- each towards loss of love and affection and loss of consortium and Rs.25,000/- towards funeral expenses.

13. In the instant case, the income of the deceased was Rs.30,100/-p.m. Accordingly, the annual income comes to Rs.3,61,200/-. Annual income after deduction of tax @ 20% comes to Rs.3,48,960/-. Income after adding future prospects @ 30% comes to Rs.4,53,648/-. Income after deducting personal expense, i.e., one-fourth comes to Rs.3,40,236/-

14. Consequently, the compensation comes as under:

Sl. No.	Heads of Compensation	Compensation granted by Id. Tribunal	Compensation granted by this Court
1.	Loss of dependency	Rs.39,59,435/-	Rs.44,23,068/-
2.	Loss of love and affection	Rs.25,000/-	Rs.1,00,000/-
3.	Loss of Consortium	Rs.10,000/-	Rs.1,00,000/-
4.	For funeral charges	Rs.15,000/-	Rs.25,000/-
	TOTAL	Rs.40,09,436/-	Rs.46,48,068/-

Resultantly, the total compensation is assessed as Rs.46,48,068/-.

15. Accordingly, compensation amount is enhanced to Rs.6,38,632/- (Rs.46,48,068 - Rs.40,09,436).

16. The enhanced compensation shall carry interest at the rate of 7.5% *per annum* from the date of filing of the claim petition till its realization.

17. The appellant /Insurance Company is directed to deposit the enhanced compensation amount with the Registrar General of this Court within a period of six weeks from today, failing which, respondents/claimants shall

be entitled for penal interest @ 12% *per annum* on account of delayed payment.

18. It is important to note that respondent nos. 4 & 5, parents of the deceased have relinquished their claims and made their statements during the course of the proceedings before the Ld. Tribunal, which has been recorded in Para 23 of impugned award.

19. Therefore, on deposit, the Registrar General is directed to release the amount in favour of the respondent nos. 1 to 3 / claimants in terms of the award dated 27.11.2012 passed by the learned Tribunal on taking necessary steps by them.

20. Accordingly, statutory amount be released in favour of the appellant.

21. In view of the above, the appeal is dismissed.

SURESH KAIT, J.

APRIL 03, 2014

Jg/sb