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

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Date of decision: 23rd November, 2014

+ MAC.APP. 1158/2014
ORIENTAL INSURANCE CO LTD

..... Appellant

Through: Mr. Pankaj Seth, Advocate

versus

HARI KANT SINGH & ORS

..... Respondents

Through: None

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

CM No. 20929/2014 (exemption)

Exemption is allowed subject to just exceptions.

MAC.APP. 1158/2014 and CM No. 20928/2014 (stay)

1. The present appeal is filed seeking to impugn the award dated 01.09.2014.
2. Brief facts are that on 23/24.12.2013 deceased Sita Ram was going on a motorcycle along with one Santosh Kumar. When they reached in front of Mandir Marg, Sheraton Hotel Saket, the motorcycle hit a truck traula which was coming from the wrong side and in a rash and negligent manner from Saket City Hospital and entered into the hospital. The Motorcycle collided with the offending vehicle. The deceased fell down and sustained fatal injuries.
3. Based on the evidence on record, the Tribunal relying upon the

judgment in the case of '*Ranu Bala Paul and Ors. Vs. Bani Chakraborty and Ors.*' 1999 ACJ 634 of the Guwahati High Court held that as the charge-sheet has been filed by the police against the driver of the offending vehicle hence the accident took place due to the negligent act of the driver of the offending Traula truck.

4. On compensation, the tribunal awarded a total compensation of Rs.13,72,158/-, the details thereof is as follows:

S.No.	Description	Amount
1.	Loss of dependency	Rs.12,37,158/-
2.	Loss of love and affection	Rs.1,00,000/-
3.	Funeral expenses	Rs.25,000/-
4.	Loss of estate	Rs.10,000/-
	Total	Rs.13,72,158/-

5. While computing loss of dependency, the Tribunal noted that as per the driving license the deceased was aged 28 years. The Tribunal added 50% to the assessed income of Rs.8,086/- p.m. for future prospects. 50% was deducted for personal and living expenses, as the deceased was a bachelor. The multiplier of 17 was used keeping in view the age of the deceased. Loss of dependency was assessed at Rs.12,37,158/-.

6. Learned counsel appearing for the appellant makes three submissions to impugn the award. He firstly submits that the accident took place due to contributory negligence. He vehemently argued that the Tribunal has not analysed the facts but has concluded about the negligent driving of the driver of the offending traula merely on the basis of the fact that the charge-sheet has been filed by the police. He submits that it is a case of contributory negligence. Learned counsel submits that it is obvious that the traula would have been visible to the deceased. The deceased was going

at a high speed and hence could not avoid the accident. Hence he submits that it is a case of contributory negligence. He further submits that future prospects have been wrongly awarded and added to the income of the deceased and that the multiplier has been wrongly used as multiplier has to be based on the age of the mother and not on the age of the deceased.

7. On the issue of negligence, perusal of the award shows that the Tribunal has merely on the basis of the pendency of the criminal case and on the basis of certified copy of the charge-sheet concluded about the accident having been taken place due to the negligent act of the driver of the offending vehicle. No details of the facts have been discussed which leads to the said conclusion.

8. The Trial Court Record was accordingly requisitioned. As per the site plan, which has been prepared by the police and which has been filed with DAR the Traula is coming from the wrong side. The vehicle has cut across the divider through a gap and has gone on the wrong side to enter into the Saket City Hospital. The motorcycle driven by the deceased hit on the rear side of the traula and fell down.

9. Perusal of the site plan, the FIR and the charge-sheet confirm that the traula has gone on the wrong side. In my opinion, a motorcyclist would not expect the vehicle coming like this on the wrong side. To expect that he should have anticipated and seen the traula and stopped would not be appropriate. It was almost midnight. The truck was on the wrong side. It was unlikely that there was any proper light to indicate that there is any vehicle coming from the wrong side of the road. Hence there is no merit in the submission of the learned counsel for the appellant.

10. On the issue of future prospects, in the case of ***Rajesh & Ors. vs.***

Rajbir Singh & Ors., (2013) 9 SCC 54, the Supreme Court held that in the case of self employed or those on fixed wages, when the victim is below 40 years an addition of 50% should be made in the wages for the purpose of computing loss of future earnings.

11. In the case of ***Smt.Savita vs. Bindar Singh & Ors., (2014) 4 SCC 505***, the Supreme Court was of the view that in the case of self employed or those engaged on fixed wages, 30% increase in income over period of time would be appropriate.

12. In the case of ***V.Mekala vs. M.Malathi & Anr., 2014 ACJ 1441***, the Supreme Court in the case of injury of a student who was studying in Class XI aged 16 years had awarded 50% increase for future prospects.

13. Further, this court in the case of ***ICICI Lombard General Insurance Company vs. Angrej Singh & Ors.*** in MAC APP. 846/2011 in judgment dated 30.09.2013 had gone into this issue and had noted the judgments of the Supreme Court in the case of ***Smt.Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr. (2009) 6 SCC 121***, ***Reshma Kumari & Ors. vs. Madan Mohan & Anr. 2013 ACJ 1253*** and other judgments and concluded that the Supreme Court in the case of ***Rajesh & Ors. vs. Rajbir Singh & Ors.,(supra)*** has held that the future prospects should be given to persons who are self-employed or on fixed wages.

14. I may further note that in MAC APP.761/2012 ***Rakesh and Ors. vs. National Insurance Co. Ltd. and Ors.*** vide judgment dated 02.04.2014 this court had in a case where the deceased was 24 years old added 50% to the income towards future prospects for computing loss of dependency based on the judgment of the Supreme Court in the case of ***Rajesh & Ors. vs. Rajbir Singh & Ors.(supra)***. Against the said judgment the appellant had filed an

SLP before the Supreme Court. The said SLP No.5612/2014 was dismissed by the Supreme Court on 10.10.2014. Hence, award of future prospects is in order.

15. Coming to the issue of multiplier, reference may be had to the judgment of this Court in the case of ***Mohd. Hasnain & Ors. vs. Jagram Meena & Ors.*** MANU/DE/0715/2014; 2014 (142) DRJ 303. This Court held that the multiplier has to be based on the age of the deceased. That was a case where the age of the deceased was 39 years.

16. This Court in the said case of ***Mohd. Hasnain & Ors. vs. Jagram Meena & Ors.*** (*supra*) relied on the judgments of the Supreme Court in case of ***M. Mansoor vs. United India Insurance Co. Ltd.***, MANU/SC/1042 and in in the case ***Amrit Bhanu Shali & Ors. vs. National Insurance Co. Ltd. & Ors.*** MANU/SC/0537/2012. In ***Amrit Bhanu Shali & Ors. vs. National Insurance Co. Ltd. & Ors.***(*supra*) the Supreme Court held as follows:-

“15. The selection of multiplier is based on the age of the deceased and not on the basis of the age of the dependants. There may be a number of dependants of the deceased whose age may be different and, therefore, the age of the dependants has no nexus with the computation of compensation.”

17. ***M. Mansoor vs. United India Insurance Co. Ltd*** (*supra*) was a case where the deceased was a bachelor of 24 years of age and the Supreme Court held that the selection of the multiplier is based on the age of the deceased and not the age of the dependants. Further, in the case of ***Amrit Bhanu Shali & Ors. vs. National Insurance Co. Ltd. & Ors.*** (*supra*) the deceased was a bachelor aged 26 years and the Court applied the multiplier of 17. In view of the said judgment passed by this Court, following the

judgments of the Supreme Court, the Tribunal erred in not taking the age of the deceased to consider the appropriate multiplier.

18. I may further note that in *Rakesh and Ors. vs. National Insurance Co. Ltd. and Ors. (supra)* where the deceased was 24 years the Tribunal had taken the multiplier of 13 considering the age of the mother of the deceased, as he was a bachelor. This court relying upon the judgment of this Court in the case of *Mohd. Hasnain & Ors. vs. Jagram Meena & Ors. (supra)* applied a multiplier of 18 based on the age of the deceased. Against the said judgment the appellant had filed an SLP before the Supreme Court. The said SLP No.5612/2014 was, as stated above, dismissed by the Supreme Court on 10.10.2014.

19. In view of the judgments above, the multiplier applied by the Tribunal based on the age of the deceased is in order.

20. There is no merit in the contention of the appellant. The present appeal is dismissed.

21. The appellant may deposit the entire awarded amount with accumulated interest @ 9% p.a. from the date of filing of the petition till the date of the award within six weeks from today as directed by the tribunal. Other directions in the award remain unchanged.

22. Statutory amount deposited by the appellant at the time of filing the appeal may be refunded to the appellant/insurance company.

23. Dasti.

JAYANT NATH, J

DECEMBER 23, 2014/An