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*　IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 02nd March, 2015

\+　**MAC.APP. 3/2007**

ORIENTAL INSURANCE CO. LTD.

..... Appellant

Through: Mr.A.K. Soni, Advocate for Mr. Pradeep Gaur, Advocate

versus

KESHAV NAND SHARMA & ORS

.... Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. **(ORAL)**

1. The instant appeal is directed against the judgment dated 20.09.2006 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of Rs.2,70,920/- was awarded in favour of Respondent no.1 for the death of his son Vijay Nand, a bachelor who succumbed to the fatal injuries

sustained in a motor vehicular accident which occurred on 19.08.1997.

2. There is twin challenge to the impugned judgment. First, the compensation awarded is exorbitant and excessive as deduction towards personal and living expenses ought to have been made to the extent of 50%, the deceased being a bachelor and the multiplier on the basis of age of mother of the deceased ought to have been taken. Second, since the driving licence of the driver was found to be fake, the Appellant Insurance Company ought to have been granted recovery rights.

3. I have perused the Trial Court record. I will agree with the learned counsel for the Appellant that in case of a bachelor, deduction towards personal and living expenses have to be 50% (See *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121)* and the multiplier has to be as per the age of the deceased or the claimant, whichever is higher. A reference in this connection may be made to *U.P. State Road Transport Corporation & Ors. v. Trilok Chandra & Ors., (1996) 4 SCC 362; Manam Saraswathi Sampoorna Kalavathi &*

Ors., v. The Manager, APSRTC, Tadepalligudem A.P. & Anr., (2010) 5 SCC 785; and the judgment of this Court in *Vijay Laxmi & Anr. v. Binod Kumar Yadav & Ors,.* MAC.APP. 1148/2011 decided on 03.01.2012.

4. The salary of the deceased was taken to be Rs.1850/- per month which was equal to the minimum wages of a semi-skilled worker at the relevant time. Therefore, the loss of dependency comes to Rs.1,44,300/- (Rs.1,850/- ÷ 2 x 12 x 13).

5. In addition, in view of three Judge Bench decision of the Supreme Court judgment in *Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54,* I further award a sum of Rs.1,00,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses and Rs.10,000/- towards loss to estate.

6. The overall compensation thus, comes to Rs.2,79,300/-, which is slightly more than the what was awarded by the Claims Tribunal. Therefore, it cannot be said that the compensation awarded by the Claims Tribunal is exorbitant or excessive.

7. As far as liability of the Appellant Insurance Company is

concerned, although the Appellant proved that licence no.S 1071/MRT/87 was issued by the Licensing Authority, Meerut in the name of one Shahid Hasan s/o Manzoor Ahmed and not in the name of Prem Singh, the driver of the offending vehicle, yet the Appellant failed to prove that there was conscious and willful breach of the terms and conditions of the insurance policy on the part of the insured. No notice was issued to the owner of the insured vehicle to prove the driving licence of the driver. Hence, in my view, the Appellant failed to discharge the initial onus placed upon it. The Appellant's liability therefore, cannot be disputed.

8. Since the Appellant Insurance Company failed to prove that there was conscious and willful breach of the terms and conditions of the insurance policy by the insured, the Appellant was rightly declined recovery rights by the Claims Tribunal.

9. The appeal therefore, has to fail; the same is accordingly dismissed.

10. The compensation payable to Respondents (claimants) shall be

disbursed/held in Fixed Deposit in terms of the orders passed by the Claims Tribunal.

11. Pending applications, if any, also stand disposed of.

12. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

MARCH 02, 2015
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