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

*Date of decision: 22nd April, 2015*

\+ **MAC.APP. 466/2012**

ORIENTAL INSURANCE CO. LTD.

..... Appellant

Through: Mr. Abhishek Kumar, Advocate with Mr. C.K. Gola, Advocate

versus

ZARINA KHATOON & ORS.

..... Respondents

Through: Mr. Nirmal Singh, Advocate for Respondents no.1 & 2.

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

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

1. With the consent of the learned counsel for the parties, the appeal is taken up for final disposal.

2. The appeal is for reduction of compensation of Rs.6,45,112/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in

favour of Respondents no.1 and 2 for the death of their unmarried son Mohd. Mujahid who suffered fatal injuries in a motor vehicular accident which occurred on 06.09.2006.

3. The Claims Tribunal took minimum wages of a matriculate and added 50% towards future prospects to compute the loss of dependency as Rs.5,15,112/-. In addition, the Claims Tribunal further awarded Rs.1,30,000/- towards non-pecuniary damages.

4. It is contended by the learned counsel for the Appellant that the deceased was only an intermediate and had not yet started earning. Even if the Claims Tribunal granted compensation on the basis of minimum wages of a matriculate, addition of 50% towards future prospects was not permissible. It is also urged that the award of compensation of Rs.1,30,000/- towards non-pecuniary damages is on the higher side.

5. On the other hand, the learned counsel for the Respondents supports the impugned judgment and urges that the compensation awarded is just and reasonable. The learned counsel states that the deceased was not merely a matriculate, in fact, he had passed his intermediate examination and was in the process of completing his graduation from

the School of Open Learning University of Delhi. In addition, the deceased had also obtained the Computer Operator Course (Ex.PW1/K) issued by the Board of Technical Education, N.C.R. Delhi.

6. It is well settled that in case of a student, his potential income has to be taken into consideration. Since the deceased was holding a Certificate of Computer Operator Course from an Institute run by the Government of NCT of Delhi, his potential income could have been taken at least Rs.6,266/- per month as per the claim of Respondents no.1 and 2. The deceased had already started working as a Computer Operator in Saifi Muslim Fund at C-76, Jama Masjid, Delhi. Even if the salary of the deceased was not proved, taking into consideration his qualification, I will accept his earning to be Rs.6,266/- per month as claimed. The loss of dependency thus, comes to Rs.4,88,748/- (Rs.6,266/- x 1/2 x 12 x 13).

7. In addition, in view of the judgment in *Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54,* Respondents no.1 and 2 are entitled to 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.

8. The overall compensation therefore, comes to Rs.6,23,748/-. In view of this, the award of Rs.6,45,112/- granted by the Claims Tribunal cannot be said to be excessive or exorbitant calling for any interference by this Court.

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

10. Pending applications also stand disposed of.

11. It is stated by the learned counsel for Respondents no.1 and 2 that a sum of Rs.2,00,000/- in all has already been released to Respondents no.1 and 2. The Respondents have already performed the marriage of their daughter and they are in dire need of money as the house in their village needs urgent repairs. It is urged that the entire amount may be released to the Respondents.

12. It is directed that a sum of Rs.2,00,000/- shall be initially released to Respondents no.1 and 2 in equal proportion. Respondents no.1 and 2 shall file status report with regard to the construction raised/repairs done with the amount of Rs.2,00,000/- and thereafter, they shall be at liberty to apply to this Court for pre-mature withdrawal of further amount if the same is needed. Respondents no.1 and 2 shall be entitled to get quarterly interest on the balance amount which shall be held in

Fixed Deposit for a period of 366 days.

13. The statutory amount, if any, deposited shall be released to the Appellant Insurance Company.

**(G.P. MITTAL)**
**JUDGE**

**APRIL 22, 2015**
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