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

Decided on: 23rd April, 2015

\+ **MAC.APP. 515/2009**

ORIENTAL INSURANCE COMPANY ..... Appellant

Through: Mr. S.L. Gupta, Adv. with Mr. Ram Ashray, Adv.

versus

SMT USHA DEVI & ORS. .... Respondents

Through: Mr. Sukhbir Singh, Adv.

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

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The appeal is for reduction of compensation of ₹38,17,000/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondents no.1 to 5 for the death of Shri Sahender Pal, a Head Constable working in Delhi Police.

2. On appreciation of evidence, the Claims Tribunal found that the accident was caused on account of rash and negligent driving of truck bearing registration no.DL-1GA-9165 by Respondent no.6 (Rajesh Kumar). It further found that the salary of the deceased Sahender Pal

was revised on account of implementation of the Sixth Pay Commission retrospectively *w.e.f.* 01.01.2006. The revised salary on the date of death *i.e.* 17.11.2007 was found to be 20,087/- per month. The deceased was aged 43 years and was survived by five legal heirs. The Claims Tribunal made addition of 50% towards future prospects, deducted 1/4 towards personal and living expenses and adopted a multiplier of 14 to compute the loss of dependency at ₹37,97,000/-. On adding certain sums towards non-pecuniary damages, an overall compensation of ₹38,17,000/- along with interest @ 7.5% per annum was awarded.

3. The following contentions are raised on behalf of the Appellant:-

(i) Sixth Pay Commission was implemented after the death of the deceased. Revised salary ought not to have been taken into consideration to compute the loss of dependency. Reliance is placed on *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121;*

(ii) The Claims Tribunal erred in granting future prospects to the extent of 50%. It should have been 30%;

(iii) Personal deductions ought to have been 1/3 as against 1/4 taken by the Claims Tribunal;

(iv) Family pension and other benefits granted on account of death ought to have been deducted from the compensation awarded;

(v) Income tax was not deducted from the salary of the deceased; and

(vi) Loss of consortium awarded @ ₹10,000/- is high.

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4. It is not in dispute that Sixth Pay Commission was implemented for the personnel of Delhi Police retrospectively *w.e.f.* 01.01.2006 as in the case of all Central Government employees and the employees of the Govt. of N.C.T. of Delhi. Of course, the Sixth Pay Commission was implemented after the date of death, yet the salary at the time of death was revised retrospectively which became payable to the deceased. Obviously, all the employees whether alive or dead would be paid arrears on account of implementation of Sixth Pay Commission retrospectively *w.e.f.* 01.01.2006. Similarly, the legal heirs were also paid arrears on the salary @ ₹20,087/-. Thus, the salary of the deceased at the time of his death shall be taken as

₹20,087/- per month. The contention raised on behalf of the Appellant that the revised salary should not have been taken into consideration and reliance on *Sarla Verma (Smt.) (supra)* is misconceived.

5. Admittedly, deceased was aged 43 years at the time of his death in the accident on 17.11.2007. The Claims Tribunal awarded 50% increase towards future prospects which was not permissible. As per the age of the deceased addition towards future prospects ought to have been only 30% in view of *Sarla Verma (Smt.) (supra)*.

6. The deceased was survived by five legal heirs. Two sons of the deceased were major who were in the process of settling in life and in their career. Therefore, even if one of the sons is excluded, deduction towards personal and living expenses will be 1/4.

7. It is well settled that deduction towards liability of income tax ought to have been made by the Claims Tribunal before computing the loss of dependency. The component of House Rent Allowance was non-taxable. In the Assessment Year 2008-2009, excluding the component of HRA, there was liability of income tax of ₹4,000/- per annum.

8. The loss of dependency therefore, comes to ₹32,35,650/- (20,087/- x 12 – ₹4,000/- (income tax) + 30% x 3/4 x14).

9. In view of the three Judge Bench decision of the Supreme Court in *Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54,* Respondents no.1 to 5 are entitled to a sum of ₹1,00,000/- each towards loss of love and affection and loss of consortium, ₹25,000/- towards funeral expenses and ₹10,000/- towards loss to estate.

10. The overall compensation, therefore, comes to ₹34,70,650/-.

11. The compensation is accordingly reduced by ₹3,46,350/-.

12. By an order dated 22.10.2009, a sum of ₹22,25,000/- was ordered to be deposited in UCO Bank, Delhi High Court Branch, New Delhi. Balance amount along with interest @ 7.5% per annum from the date of filing of the Claim Petition upto the date of the deposit, shall be deposited in UCO Bank, Delhi High Court Branch, New Delhi within four weeks, failing which Respondents no.1 to 5 shall be entitled to interest @ 12% per annum.

<u>APPORTIONMENT</u>

13. Share of the Respondents is accordingly re-computed as under:-

(i) Respondent no.1, Usha Devi (widow): ₹20,00,000/- (along with proportionate interest)

(ii) Respondent no.2: ₹4,00,000/- (along with proportionate interest)

(iii) Respondent no.3: ₹4,00,000/- (along with proportionate interest)

(iv) Respondent no.4: ₹4,00,000/- (along with proportionate interest)

(v) Respondent no.5, (mother): ₹2,70,650/- (along with proportionate interest).

14. By an order dated 07.12.2009 deposits were held for various periods which seems to be over in case of Respondents no.1 to 5. The amount as stated in para 3 of the order dated 07.12.2009 in favour of Respondents no.2 to 5, if not released already shall be released forthwith.

15. The amount payable to Respondent no.1 was to be released in December, 2016. Therefore, another sum of ₹ 4,00,000/- shall be released in favour of Respondent no.1 immediately. Balance amount shall be held in Fixed Deposit for a period of 2 years and 4 years in equal proportion.

16. The balance amount held payable to Respondents no.2 to 5 shall be held in fixed deposit for a period of one year.

17. The appeal is allowed in above terms.

18. Pending application also stands disposed of.

19. Statutory amount, if any, deposited shall be refunded to the Appellant on deposit of the balance amount.

(G.P. MITTAL)
JUDGE

APRIL 23, 2015
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