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

Decided on: 22nd April, 2015

\+ **MAC.APP. 797/2010**

ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr. Amit Gaur, Adv.

versus

SAMEENA KHATOON & ORS. ..... Respondents

Through: Nemo.

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 ₹36,04,604/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondents no.1 to 5 for the death of Anwar Ahmed, who suffered fatal injuries in a motor vehicular accident which occurred on 12.09.2007.

2. The following contentions are raised on behalf of the Appellant Insurance Company:-

   (i) The deceased was getting conveyance allowance of ₹6,000/- per month which formed a part of his salary of ₹35,000/- per month.

The conveyance allowance ought to have been deducted from the salary for the purpose of computation of loss of dependency;

(ii) The Claims Tribunal deducted 1/4 towards personal and living expenses considering all the legal representatives of the deceased as financially dependant upon him. Respondent no.2 Israr Ahmed and Respondent no.3 Istkhar Ahmad, both sons of deceased Anwar Ahmed were aged about 22 and 24 years respectively. They being major sons were not financially dependant upon the deceased. Deduction towards personal and living expenses should have been therefore made 1/3 instead of 1/4; and

(iii) The income earned by the deceased was taxable. No deduction towards income tax was made by the Claims Tribunal while computing the loss of dependency.

3. I have the Trial Court Record before me. The deceased was getting a total salary of ₹35,000/- p.m. which included a sum of ₹9,000/- towards House Rent Allowance (HRA) and ₹6,000/- towards Conveyance Allowance. He was working as a Pattern Master with M/s. Neetee Clothing Pvt. Ltd., Shanti Niketan, New Delhi.

4. Since the deceased had a large family to support, it can very well be said that the deceased may have been very conservative in spending the amount of conveyance allowance and the entire amount of ₹6,000/- would not have been spent on reporting for work. In view of this, I will take a sum of ₹2,000/- per month as being spent on conveyance and ₹4,000/- being utilised by the deceased for himself as well as for the benefit of his family members.

5. The deceased was being paid a sum of ₹9,000/- towards HRA. HRA amount equaling 40% of the basic pay will be tax free, if the amount was being spent for provision of a house. Thus, a sum of ₹1,000/- only out of HRA was taxable. Thus, if the amount of ₹8,000/- per month is deducted for the purpose of calculation of the income tax, still any income beyond ₹1,50,000/- entails the liability to pay income tax. In view of the above discussion, there would be a liability of about ₹5,000/- towards payment of income tax.

6. Of course, Respondents no.2 to 4 were the major sons of deceased Anwar Ahmed. It goes without saying that even after attaining majority, the children still require financial support from the parents and even if one of the sons, who was aged 24-25 years old is taken to be financial independent, still deduction towards personal and living

expenses will be 1/4. The loss of dependency, in view of the above discussion will come to ₹32,25,750/- (35,000/- x 12 – 24,000/- (conveyance) – ₹5,000/- (income tax) x 3/4 x 11 (deceased being 53 years).

7. In addition, Respondents no.1 to 5 will be 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.

8. The overall compensation therefore comes to ₹34,60,750/-.

9. The compensation payable shall be disbursed in favour of Respondents no.1 to 5 in terms of the order passed by the Claims Tribunal.

10. The excess amount of ₹1,43,854/- along with interest if any earned on the excess amount, shall be refunded to the Appellant Insurance Company.

11. The appeal is allowed in above terms.

12. Pending applications also stand disposed of.

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

(G.P. MITTAL)
JUDGE

APRIL 22, 2015
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