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

\+ MAC.APP. 83/2009 & C.M.No.7520/2009

RAMESH KUMAR & ORS. ..... Appellants

Through : Mr.M.K.Sinha, Advocate

versus

THE ORIENTAL INSURANCE CO. LTD. & ANR.

..... Respondents

Through : Mr.J.P.N.Shahi, Advocate for respondent No.3.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

O R D E R

% 29.11.2016

In this appeal, enhancement of compensation is sought. Appellants are the husband and children of a lady – *Mamta* aged 40 years, who had died while she was travelling in a Maruti Van, which had struck against a tree while appellant No.1, who was driving the said van, tried to save a cow on the road. This accident had occurred in the morning at 04.00AM on 04th September, 2005.

Vide impugned Award of 19th September, 2008, two claim petitions had been decided. First one is by the husband and children of the deceased, who have been granted compensation of ₹60,000/- only whereas the second claim petition was by appellant No.2, whose minor son aged three years, had died in the accident in question. Appellant No.2 has been granted compensation of ₹1,54,500/- with interest.

At the outset, learned counsel for appellants submits that this appeal relates to the death of *Mamta*, who had died in the accident in question. Learned counsel for appellant confines this appeal to seek enhancement of compensation to appellant Nos.2 to 8 by submitting that compensation granted to these appellants is quite meagre. It is further submitted that no compensation has been granted under '*Non-Pecuniary Head*'. It is also submitted that the deceased was working as a house-maid in different houses and was earning ₹3,300/- per month and while keeping in view her earning capacity, the compensation awarded ought to be suitably enhanced by applying the multiplier method.

Learned counsel for the respondent No.3/insurer submits the claim petition by appellant No.1 is not maintainable as he is disentitled to any compensation on account of his being the wrong doer, as he was driving the van in question negligently. It is next submitted by learned counsel for respondent/insurer that no case for enhancement of the compensation is made out because it is not established that deceased was working as a house-maid and thus, enhancement of compensation is not justified in the facts and circumstances of this case.

Upon hearing and on perusal of the impugned Award, the evidence on record, I find that this appeal by appellant No.1 is not maintainable as the death of his wife was caused because of his negligent driving. There is no evidence on record to justify enhancement of compensation. Such a view is taken because the evidence led on behalf of appellants comprises of deposition of first two appellants only. Once, the evidence of appellant No.1 is excluded from consideration, then the evidence of second appellant is not sufficient to enhance the compensation. This being so said because

appellant No.2 has led evidence regarding the death of his child only, which is not subject matter of this appeal. Due to lack of evidence, no enhancement of compensation is called for.

Accordingly, this appeal and the application are dismissed.

(SUNIL GAUR)
Judge

NOVEMBER 29, 2016
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