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

Date of Decision: 3rd March, 2016

\+ **MAC.APP. 56/2014**

ORIENTAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. Pradeep Gaur & Mr. Amit Gaur, Advs.

versus

SMT. RAMBHA DEVI& ORS. ..... Respondents
Through: Mr. Sanjiv Srivastava, Adv.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The insurance company questions only the computation of compensation awarded by the motor accident claims tribunal (the tribunal) by judgment dated 27.08.2013 in MACT case No. 178/2012 whereby compensation in the sum of ₹ 35,53,737/- was awarded with interest @ 7.5% per annum from the date of filing of the petition (17.8.2012) till realization in favour of the first to fifth respondents (collectively, the claimants) on account of death of Ganga Saran in a motor vehicular accident that occurred on 7.4.2012 involving vehicle No. DL 4S BR 1520 (the offending vehicle) concededly insured with it.

2. The sole ground in this appeal is that in arriving at the compensation payable for loss of dependency, the tribunal added the element of future prospects ignoring the fact that in the case at hand where the deceased was

51 years old, no such factor could have been added in view of the dictum in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.,* (2009) 6 SCC 121. The learned counsel for the claimants fairly concedes this position. The loss of dependency, thus, has to be recalculated.

3. The deceased was 51 year old. The tribunal had adopted the multiplier of 11. It held, on the basis of evidence led, that the income of the deceased from Government service is ₹ 29,150/- per month. Since, the number of dependants of deceased were five, 1/4th has to be deducted towards personal and living expenses. Therefore, the monthly loss of dependency comes to (₹ 29,150 X 3 /4) ₹ 21,862.5 rounded off to ₹ 21,863/-. The total loss of dependency comes to ₹ (21,863 X 12 X 11) ₹ 28,85,916/-. Adding the non-pecuniary heads of damages in the total sum of ₹ 2,35,000/- as awarded by the tribunal, the total compensation payable in the case comes to ₹ 31,20,916/- rounded off to ₹ 31,21,000/-

4. Following the consistent view taken by this Court (see MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors* decided on 22.02.2016), however, the rate of interest is increased to 9% from the date of filing of the petition till realization.

5. The tribunal had specified the amounts payable to the claimants from out of the award of compensation granted. Since the award has been reduced, the said apportionment needs to be modified. It is directed that the second to fifth respondents shall be entitled to compensation in the sum of ₹ 2,00,000/- each while the entire balance shall go to the first respondent (the widow). The amount shall be disbursed in the names of the claimants with suitable modification in the terms on which the fixed deposit receipts are to be taken out, for which the tribunal may issue necessary directions.

6. By order dated 21.1.2014, it had been noted that the tribunal had recovered the amount from the insurance company by attachment of its bank account. It was directed that the tribunal shall release 80% of the awarded amount in favour of the claimants, retaining the balance. The tribunal shall now calculate the amounts payable to each claimant in terms of the award modified as above and take necessary steps to ensure that the balance, if any, is released to each of them, refunding the excess to the insurance company.

7. Statutory deposit, if made, shall be refunded.

8. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 03, 2016
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