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

% **Date of Decision: 23rd August, 2016**

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\+ MAC.APP. 153/2016 & CM Nos.5680/2015, 23227/2016

THE ORIENTAL INSURANCE CO LTD ..... Appellant
Through: Mr. Shoumik Mazumdar, Adv. for Mr.Pankaj Seth, Adv.

versus

PANKAJ KUMAR JHA & ORS ..... Respondents
Through: Mr. Peeosh Sharma, Mr. Kartikey Nayyar, Ms. Shaurya M. Tomar, Advs.

19

\+ MAC.APP. 159/2016 & CMs 5925/2016, 25724/2016

THE ORIENTAL INSURANCE CO LTD ..... Appellant
Through: Mr. Shoumik Mazumdar, Adv. for Mr.Pankaj Seth, Adv.

versus

PANKAJ KUMAR JHA & ORS ..... Respondents
Through: Mr. Peeosh Sharma, Mr. Kartikey Nayyar, Ms. Shaurya M. Tomar, Advs.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the award dated 4th December, 2015 whereby the compensation of Rs.10,04,536/- has been awarded in respect of the death of Nawal Kishore Jha and Rs.11,38,688/- has been awarded in respect of the death of late Gaurav Kumar Jha.

2. The accident dated 10th May, 2013 resulted in the death of Nawal Kishore Jha and his son, Gaurav Kumar Jha. Nawal Kishore Jha aged 55 years was survived by his two sons and mother whereas Gaurav Kumar Jha aged 19 years was survived by two brothers and grandmother.

3. Nawal Kishore Jha was a daily wager and the Claims Tribunal took minimum wages of Rs.7,722/- in respect of unskilled worker, deducted 1/3rd towards his personal expenses and applied the multiplier of 11 to compute the loss of dependency at Rs.6,79,536/-. The Claims Tribunal awarded Rs.2,00,000/- towards loss of love and affection, Rs.1,00,000/- towards loss of estate and Rs.25,000/- towards funeral expenses. Total compensation awarded is Rs.10,04,536/-.

4. Gaurav Kumar Jha, aged 19 years was a student and was also imparting computer coaching. The Claims Tribunal took minimum wages of Rs.9,386/- in respect of a matriculate, added 50% towards future prospects, deducted 1/3rd towards personal expenses and applied the multiplier of 18, to compute Rs.10,13,688 towards loss of estate. The Claims Tribunal awarded Rs.1,00,000/- towards loss of love and affection and Rs.25,000/- towards funeral expenses. Total compensation awarded is Rs.11,38,688/-.

5. Learned counsel for the appellant has urged at the time of the hearing that the future prospects of 50% should not be taken into consideration in the case of Gaurav Kumar Jha. It is further submitted that the multiplier according to the age of the claimants be taken into consideration instead of the multiplier of 18 according to the age of the deceased. Learned counsel for the appellant submits that the deduction of 50% be made towards the personal expenses of the deceased. It is further submitted that the penal rate of interest @ 12% per annum be set aside as the appellant had filed the appeal before this Court.

6. On consideration of the contentions raised, this Court is of the view that the compensation awarded in both the cases is fair and reasonable. There is no infirmity in the Claims Tribunal taking 50% as future prospects in respect of Gaurav Kumar Jha aged 19 years who was a student and was also imparting computer coaching. The deceased, Gaurav Kumar Jha was survived by his two brothers and grandmother who were all major and therefore, the Claims Tribunal awarded loss of estate to them in terms of the principles laid down by this Court in ***Keith Rowe v. Prashant Sagar,*** 2011 ACJ 1734. With respect to the Nawal Kishore Jha, the Claims Tribunal has rightly deducted 1/3rd towards his personal expenses to compute the loss of dependency. The compensation awarded towards loss of love and affection and loss of estate is also fair and reasonable. However, there is merit in the appellant's contention that penal rate of interest @ 12% per annum is liable to be set aside as the appellant's had preferred appeal before this Court. The direction of the Claims Tribunal with respect to the penal interest is therefore, liable to be set aside.

7. Both the appeals are dismissed and the award of the Claims Tribunal are upheld except to the extent that the appellant is not liable to pay the penal interest.

8. The appellants have deposited Rs.12,02,196/- in MAC.APP. 153/2016 and Rs.13,62,744/- in MAC.APP. 159/2016 with the Claims Tribunal, Karkardooma Courts on 13th April, 2016 and the said amount is lying in FDR with UCO Bank, Karkardooma Courts.

9. Respondent no.3 has expired and her share has devolved upon respondents No.1 and 2 who are present in Court.

10. The share of respondents No.1 and 2 in the amount deposited by the appellants shall be equal.

11. With respect to the 50% share of respondent no.1, the Claims

Tribunal shall release 10% of his share to him by transferring the same to his savings bank account. The balance 90% of the 50% share of respondent no.1 be kept in fixed deposits in the following manner:

Sr. No.	Duration of FDR	Resp. 1 50%
1.	1 yr	**10%**
2.	2 yrs	**10%**
3.	3 yrs	**10%**
4.	4 yrs	**10%**
5.	5 yrs	**10%**
6.	6 yrs	**10%**
7.	7 yrs	**10%**
8.	8 yrs	**10%**
9.	9 yrs	**10%**
TOTAL		**90%**

12. With respect to the 50% share of respondent no.2, the Claims Tribunal shall release 10% thereof to respondent no.2. The balance 90% of the 50% share of respondent no.2 be kept in fixed deposits in the following manner:

Sr. No.	Duration of FDR	Resp. 2 50%
1.	6 months	**10%**
2.	1½ yrs	**10%**
3.	2½ yrs	**10%**
4.	3½ yrs	**10%**
5.	4½ yrs	**10%**
6.	5½ yrs	**10%**
7.	6½ yrs	**10%**
8.	7½ yrs	**10%**
9.	8½ yrs	**10%**
TOTAL		**90%**

13. Monthly interest on the FDRs of respondent No.1 and respondent No.2 shall be credited in their individual savings bank accounts.

14. At the time of maturity, the fixed deposit amount shall be automatically credited in the savings bank accounts of the beneficiaries.

15. All the original FDRs shall be retained by UCO Bank. However, the photocopies of the same shall be provided to the respondents.

16. No cheque book or debit card to be issued to the claimants/respondents without permission of the Court.

17. No loan or advance or pre-mature discharge shall be permitted without the permission of this Court.

18. The order of the disbursement of the award amount by the Claims Tribunal is modified to the above extent. The Claims Tribunal shall direct the UCO Bank, KKD Branch to disburse the award amount in terms of this judgment.

19. The claimants/respondents shall approach the UCO Bank, KKD Branch for disbursement of the award amount in terms of this judgment.

20. UCO Bank, KKD Branch shall ensure that the savings bank accounts of respondent No.1 and respondent No.2 are individual accounts and not joint accounts.

21. The claimants/respondents are at liberty to approach this Court for release of further amount in case of any financial exigency.

22. The Accounts Officer of this Court shall verify whether the amount deposited by the appellant covers the interest upto the date of the deposit and thereafter, statutory amount be refunded back to the appellant. However, in the event of any short deposit, the Registry shall deduct the same from the statutory amount and send the same to respondents no.1 and 2 through UCO Bank and balance statutory amount be refunded back to the appellant.

23. Copy of this judgment be given *dasti* to learned counsel for the parties

under signatures of Court Master.

24. All pending applications are disposed of.

J.R. MIDHA, J.

AUGUST 23, 2016
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