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

Date of Decision: 17th May, 2016

\+ **MAC.APP. 256/2014**

ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr. Pradeep Gaur, Adv.

versus

SEEMA PANDEY & ORS ..... Respondents

Through: Mr. S. N. Parashar, Adv.

AND

\+ **MAC.APP. 258/2014**

ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr. Pradeep Gaur, Adv.

versus

RANI PANDEY & ORS ..... Respondents

Through: Mr. S. N. Parashar, Adv.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 28.04.2012, Arvind Kumar Pandey, aged 42 years, and Sanjay Kumar Pandey, aged 40 years, died as a result of injuries suffered in a motor vehicular accident due to negligent driving of the truck-trailer bearing

registration no.RJ-14GB-2211 (the offending vehicle), admittedly insured against third party risk with the appellant/insurance company (the insurer) for the period in question. Three accident claims were filed, two of which have given rise to these appeals, one (MAC appeal no.386/2012) having been instituted by first to fourth respondents (claimant in MAC appeal no.256/2014) and, the other, by first to third respondents (the claimants in MAC appeal no.258/2014) on account of death of Arvind Kumar Pandey and Sanjay Kumar Pandey respectively. In both the cases, the insurer was impleaded as respondent in addition to driver and owner of the offending vehicle.

2. By a common judgment passed on 20.12.2013, the motor accident claims tribunal (the tribunal) upheld the case of the claimants in both these cases about death having occurred due to negligent driving of the offending vehicle. The said finding has attained finality as the same was not challenged.

3. The tribunal awarded compensation in case of death of Arvind Kumar Pandey in the sum of ₹16,21,584/- and in the case of death of Sanjay Kumar Pandey, in the sum of ₹18,95,760/-, directing the insurer to pay the same with interest at the rate of 7.5% per annum. The amounts awarded as compensation in both the cases include ₹1,00,000/- each towards loss of consortium and loss of care & guidance besides ₹25,000/- towards cremation charges, balance having been calculated as loss of dependency.

4. The insurer is in appeal questioning the awards in the two cases on the ground that in calculating the loss of dependency the tribunal added element

of future prospects because the income had been notionally assessed on minimum wages. *Per contra*, the claimants argued that the tribunal failed to grant any award towards loss of estate and that the rate of interest levied is on the lower side.

5. It is noted that the claimants in both the cases were unable to muster clear proof as to the nature of avocation and progressive rise in income of both the deceased persons. Thus, the element of future prospects has to be kept out.

6. In case of death of Arvind Pandey, proof was adduced that he was a matriculate. Thus, the tribunal assumed income notionally at ₹8528/- per month, it being the rate of minimum wages for matriculate. Having regard to the age (42 years) of the deceased, the tribunal applied the multiplier of 14 and deducted one-fourth towards personal and living expenses (keeping in view the number of dependants). In the case of Sanjay Kumar Pandey, the claimants proved that he was a graduate and, thus, minimum wages of ₹9282/- was adopted. Since he was 40 years old, the multiplier of 15 was applied, with personal and living expenses having been discounted to the extent of one-third (since there are only three dependants).

7. The loss of dependency in the case of death of Arvind Pandey is re-computed as (8528x3/4x12x14) ₹10,74,528/-, rounded off to ₹10,75,000/-. Adding the amount of ₹25,000/- towards loss to estate in addition to non-pecuniary damages awarded by the tribunal, the total compensation in the case comes to (10,75,000+2,50,000) ₹13,25,000/-.

8. In the case of death of Sanjay Kumar Pandey, the dependency loss is re-computed as (9282 x 2/3 x 12 x 15) ₹11,13,840/-, rounded off to ₹11,14,000/-. Adding ₹25,000/- towards loss to estate and the non-pecuniary damages as awarded by the tribunal, the total compensation in the case comes to (11,14,000+2,50,000) ₹13,64,000/-.

9. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.], the rate of interest is increased to 9% per annum in each case from the date of filing of the petition till realization.

10. The awards are modified accordingly.

11. By identical order dated 24.03.2014 in each of these appeals, the appellant/insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General and, out of such deposit, 50% was allowed to be released, the balance kept in fixed deposit receipts with UCO Bank, Delhi High Court branch for a period of one year to be renewed periodically. The Registrar General shall calculate the amount payable to the claimants in terms of the award modified as above and release the balance to them, refunding the excess, if any, in deposit with statutory deposit, if made, to the insurance company.

12. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 17, 2016/ssc