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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 30th March, 2016

+ **MAC.APP. 312/2011**

ORIENTAL INSURANCE CO LTD

..... Appellant

Through Mr. Tarkeshwar Nath and Mr. Onkar
Nath, Adv.

versus

PUSHPA DEVI & ORS

..... Respondent

Through Ms. Roopali Chaturvedi, Adv. for R-1
to R-4

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Satya Prakash had retired from army service and was getting pension of ₹8,742/- per month. He was 59 years old on the relevant date and was still working for gain, having been engaged in private service of Geeta Ashram Vidya Mandir from where he would receive salary of ₹8,190/- per month. He died in a motor vehicular accident that occurred on 25.02.2008 on being hit by water tank bearing No.HR 61 4811 admittedly insured against third party risk for the period in question with the appellant insurance company (insurer). His widow and children (first to fifth respondents herein) filed a claim petition (MACT case No.756/2009) before the motor accident claims tribunal (tribunal) on 20.01.2009 impleading the driver, owner and insurer of the offending vehicle as respondents. The tribunal held inquiry and on that basis awarded compensation in the sum of

₹14,26,000/- with interest from the date of filing of the petition till realization calculating the award as under:

1)	Loss of dependency	Rs. 12,96,000/-
2)	Loss of love and affection	Rs. 1,00,000/-
3)	Loss of consortium	Rs. 10,000/-
4)	Funeral expenses	Rs. 10,000/-
5)	Loss to estate	Rs. 10,000/-
Total		Rs. 14,26,000/-
<u>(Rupees Fourteen Lacs Twenty Six Thousand Only)</u>		

2. Having been fastened with the liability, the insurer has come up in appeal questioning the computation of loss of dependency by addition of the entire pension receivable by the deceased during his lifetime to the earnings. The objection essentially is that, after his death, his widow has been in receipt of family pension from army, a fact which was admitted by Avinash Dubey (PW1) one of the claimants, he being the son of the deceased. The family pension, under the normal service rules, would be half of the pension that the retired government servant is entitled to. In these circumstances, the value of the family pension that would have been received by the widow after the death would be in the sum of ₹4,371. This cannot be treated as loss of dependency. It is the balance of ₹4,371/- by which the income from pension for the purposes of the family has been reduced which only deserved to be added to the calculations.

3. Thus, the loss of dependency needs to be recomputed on the earnings on (8,190 + 4,371) ₹12,561/- per month. Given the age of 59 years, the tribunal rightly declined to add the element of future prospects. One fourth of the income was deducted towards personal and living expenses, and

rightly so, since the number of dependents is five. In this view, the loss of monthly dependency is worked out as $(12,561 \times 3 \div 4)$ ₹9,421/-. On the multiplier of 9, the total loss of dependency comes to $(9,421 \times 12 \times 9)$ ₹10,17,468/-.

4. There is merit in the submission of the learned counsel for the claimants (first to fifth respondents) that the award under the heads of loss of consortium, funeral expenses and loss of estate is inadequate.

5. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, compensation in the sum of ₹1 lakh towards loss of consortium and ₹25,000/- each towards loss of estate and funeral expense are added, besides ₹1 lakh already awarded by the tribunal towards loss of love & affection. Thus, the total compensation payable in the case comes to $(10,17,468 + 2,50,000)$ ₹12,67,678/- rounded off to ₹12,68,000/-. Needless to add, it shall carry interest as levied by the tribunal.

6. The tribunal had apportioned the compensation by specifying the amounts falling to the share of each of the claimants. Since the compensation has been reduced, with the three children having assumably become self-reliant over the period, the shares of second to fourth respondents are reduced to ₹1,50,000/- each, while maintaining the share of fifth respondent (mother) at ₹1 lakh, the entire balance being payable to the widow (first respondent) with proportionate interest.

7. By order dated 18.05.2011, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General within the period specified whereupon 50% was allowed

to be released. The Registrar General shall now calculate the amount payable to the claimants in terms of the award modified as above from out of the balance lying in deposit, refunding the excess with statutory deposit, if made, to the insurer.

8. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 30, 2016/VLD

