$~18, 19, 26 & 28

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

Date of Decision: 6th April, 2016

\+ MAC.APP. 87/2014

ORIENTAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. Tarkeshwar Nath, Adv.

versus

SH. DAYAL SINGH & ORS ..... Respondents
Through: Mr. Anshuman Bal, Adv.

\+ MAC.APP. 99/2014

ORIENTAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. Tarkeshwar Nath, Adv.

versus

SH. BALWANT SINGH & ORS ..... Respondents
Through: Mr. Anshuman Bal, Adv.

\+ MAC.APP. 201/2015

SH. BALWANT SINGH & ORS ..... Appellant
Through: Mr. Anshuman Bal, Adv.

versus

ORIENTAL INSURANCE CO. LTD. & ANR. ..... Respondents
Through: Mr. Tarkeshwar Nath, Adv. for R-1.

\+ MAC.APP. 222/2015

SH. DAYAL SINGH & ANR. ..... Appellant
Through: Mr. Anshuman Bal, Adv.

versus

ORIENTAL INSURANCE CO. LTD. & ANR. ..... Respondents

Through: Mr. Tarkeshwar Nath, Adv. for R-1.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 29.10.2009, the third respondent Arun Tyagi, the owner of the motorcycle bearing registration no. DL 9S AA 5653 (the motorcycle) was driving with two persons travelling as pillion riders, they being Paan Singh, aged 21 years and Ajit Singh, aged 22 years. The motorcycle met with an accident at about 6.40 p.m. near Harvansh Farm Kharkhari Nahar, Najafgarh. As a result of injuries suffered, both pillion riders Paan Singh and Ajit Singh died. Their respective parents brought two accident claim cases invoking the provision contained in section 163-A of Motor Vehicles Act, 1988 (MV Act) before the motor accident claims tribunal (the tribunal). The accident claim case concerning Paan Singh was registered as petition no. 331/2009, it having been preferred by his parents Dayal Singh and Kanti Devi (now appellants in MAC Appeal no. 222/2015). The accident claim case concerning death of Ajit Singh, registered as petition no. 332/2009 was brought by his parents Balwant Singh and Sulochana Devi (now appellants in MAC Appeal no. 201/2015). In both the claim cases, Arun Tyagi (the registered owner of the motorcycle) was impleaded as first respondent in addition to Oriental Insurance Company Ltd. (appellant in MAC Appeal Nos. 87/2004 and 99/2004), it being admittedly the insurance company which had issued

third party insurance policy in respect of the motorcycle for the period in question.

2. The tribunal held inquiry and on that basis concluded that the deaths of Pan Singh and Ajit Singh had occurred in an accident on account of use of the motorcycle, thus finding the two cases squarely covered within the four corners of the special provision contained in Section 163-A of MV Act. It was held that the income of each of the deceased persons was Rs. 40,000/- per annum and, after deducting 1/3rd towards personal & living expenses, the loss of dependency was calculated, with the multiplier of 13 (having regard to the age of the claimants) at Rs. 3,44,671/- in each case. The non-pecuniary damages on account of funeral expenses, loss of estate and loss of consortium in the total sum of Rs. 9,500/- were added. The compensation, thus, computed in the sum of Rs.3,56,161/- was awarded with interest @ 7.5% from the date of filing of the respective petition (21.12.2009 in each case) till realization.

3. The insurance company had contested the claim petitions before the tribunal on the ground that the insurance policy, copy of which was submitted (page 23 of the paper book in MAC Appeal nos. 87/2014 and 99/2014) would not permit triple riding of the motorcycle, a two wheeler motor vehicle and, thus, the act of carrying of a third person on the pillion amounted to breach of terms and conditions of the indemnity clause. This plea was rejected by the tribunal and the liability to pay compensation was fastened on the insurance company.

4. By its appeals (MAC Appeal Nos. 87/2014 and 99/2014), the insurance company presses for recovery rights reiterating that there was

breach of terms and conditions of the policy as the motorcycle rider (owner/insured) had knowingly carried third person on the motorcycle which was impermissible.

5. *Per contra,* the claimants in both cases have come up with their own appeals (MAC Appeal Nos. 201/2015 and 222/2015) seeking enhancement of the compensation, their contentions being that the special provision contained in Section 163-A of MV Act requires the compensation to be calculated on structured formula basis as per the second schedule appended to the MV Act by amendment Act no. 55 of 1994. It is pointed out that the choice of multiplier in the said special provision is to be made according to the age of the victim and not that of the claimants. It is submitted that since Pan Singh was 21 year old and Ajit Singh was 22 year old at the time of accident, the multiplier of 17 should have been applied. The claimants also pray for enhancement of the rate of interest.

6. Insofar as the finding as to the income of the deceased persons is concerned, the same not having been challenged, has attained finality. There is substance in the contention of the claimants that the multiplier had to be chosen as per the age of the victim. Therefore, the loss of dependency has to be calculated on the multiplier of 17. Since the annual loss of dependency was worked out at Rs. 26,667/-, the total loss of dependency comes to (26,667 x 17) Rs. 4,53,339/-, rounded off to Rs. 4,54,000/- in each case. As the deceased persons were bachelors, award could not have been made on account of loss of consortium. The same, however, can be read as award made for loss of love & affection.

7. Thus, the total compensation in each case comes to (4,54,000+ 9,500) Rs. 4,63,500/-. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum from the date of filing of the respective petitions till realization [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.].

8. The registered owner/insured (first respondent before the tribunal) in his contest to the petitions had only pleaded that the vehicle was insured and, therefore, he would not liable to pay any amount of compensation. In spite of notice, he (third respondent in the appeals by the insurer) has not appeared to contest the appeals of the insurance company.

9. From the documents placed on record, it is clear that the insurance policy in respect of the motorcycle covered the risk of only one passenger carried on the motorcycle in addition to the driver. The fact that the third respondent in the said appeals (the owner/insured) had carried an additional passenger on the pillion does amount to fundamental breach of terms and conditions of the policy. Therefore, the submission of the insurance company is upheld. Whilst it shall continue to be liable to satisfy the claim of the third parties, it is held entitled to recovery rights against the owner/insured (Arun Tyagi).

10. By orders dated 31.1.2014 in MAC Appeal nos. 87/2014 and 99/2014, the tribunal had been allowed to release 90% of the awarded amount which had been deposited by the insurance company in terms of the impugned judgment. The balance lying in deposit shall also now be released. The insurance company is directed to deposit the remainder of

its liability under the awards modified as above with the tribunal within 30 days whereupon the same shall be released to the respective claimants. After satisfying the awards in each of these cases, the insurance company shall have the liberty to take out appropriate proceedings before the tribunal to recover the amounts paid to the claimants from the registered owner/insured in respect of the offending vehicle.

11. The statutory deposits, if made by the insurance company, shall be refunded.

12. The appeals stand disposed of in above terms.

R.K. GAUBA
(JUDGE)

APRIL 06, 2016
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