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

Date of Decision: 29th March, 2016

\+ MAC.APP. 872/2012 & CM Nos. 13789/2012, 13791/2012, 13830-31/2013

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

Versus

SMT. POONAM& ORS ..... Respondents
Through: Mr. Navneet Goyal, Adv.for R-1 to 4.

AND

\+ MAC.APP. 539/2013

SMT. POONAM& ORS ..... Appellants
Through: Mr. Navneet Goyal, Adv.

versus

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

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Both these appeals arise out of the judgment dated 29.05.2012 of Motor Accident Claims Tribunal (the tribunal) in an accident claim case (MACT No. 40/11/09) brought by first to fourth respondents herein (the claimants) seeking compensation under Sections 166 and 140 of Motor

Vehicles Act, 1988 (MV Act) on account of death of Yogesh (the deceased) due to injuries suffered in a motor vehicular accident that occurred at about 8.15 p.m. on 30.07.2009 involving collision between a motorcycle bearing No. DL 9S P 8659 (the motorcycle) driven by him and tempo bearing No. DL 1LD 0075 (the offending vehicle) which was admittedly insured against third party risk with the Oriental Insurance Company Ltd. (appellant in MAC Appeal No. 872/2012). In the claim petition, aside from Oriental Insurance Company Ltd. (the insurer), the driver (Raju Lal Meena) and owner (Ms. Ameena Khan) were impleaded as respondents. The tribunal held inquiry and on that basis, by judgment dated 29.05.2015, granted compensation in the sum of ₹ 13,31,000/-with interest @ 9% per annum from the date of filing of the petition till payment, which would include ₹ 12,96,000/- towards loss of dependency, ₹ 25,000/- towards loss of love & affection and ₹ 5,000/- each towards cremation expenses and loss of estate.

2. The insurance company had admitted the insurance cover but pleaded that there has been a breach of terms and conditions in that the driving license held by the driver (fifth respondent herein), on verification, was found to be a forged document. Some evidence was led in this regard through Mr. V.D. Talwar, Administrative Officer (R3W1) and Radhey Shyam, Advocate engaged as an investigator (R3W2). The tribunal, however, was not satisfied for the reason that no witness from the office of licensing authority, Mathura, which purported to have issued the said document, was examined, for ascertaining the validity or forgery of the said document. The insurance company was, thus, directed to satisfy the award. It may be mentioned here that at the fag end of the impugned judgment, the

tribunal also directed payment of ₹ 11,000/- by the insurer towards counsel's fee.

3. The insurance company, by its appeal (MAC Appeal No. 872/2012), has questioned the computation of loss of dependency on the ground that the future prospects were wrongly added in the said calculations. It also expresses grievance about the additional burden of counsel's fee fastened on it and further contended that though steps were taken for summoning the requisite witness from the office of licensing authority, Mathura, the witness would not turn up and against this backdrop, the opportunity for evidence was closed. It is the contention of the insurance company that against this factual matrix, the evidence through R3W1 based on the verification report, from the licensing authority, Mathura, should have been accepted. Noticeably, in para 84 of the impugned judgment, the tribunal noted that the counsel for the driver and owner had also filed copy of Form 54 purporting to have been issued by the same licensing authority which indicated that the driver (fifth respondent) was eligible to drive the heavy transport vehicle. This report, if true and genuine, would be in sharp contrast to the report on which the insurer relies.

4. The claimants, on the other hand, by their appeal (MAC Appeal No. 539/2013), have sought enhancement of the compensation on the ground that the income proved through salary slip (Ex.P-5) for the month of July, 2009 and through the witnesses summoned from the office of the employer of the deceased (PW-3 Yogesh Kaushik and PW-4 Pramod Yadav) was not taken into consideration in entirety. It is argued that the income was ₹ 8,000/- per month which should have been taken into consideration. The

claimants defend the view taken by the tribunal in adding the element of future prospects to the extent of 50% but further argued that deduction to the extent of 1/3rd towards personal & living expenses was not correct inasmuch as the dependants are four in number and, per the dictum in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.,* (2009) 6 SCC 121, deduction on this account should have been made to the extent of 1/4th. The claimants also urge that the non-pecuniary damages as awarded by the tribunal deserve to be increased and further compensation deserve to be added under the head of loss of consortium.

5. This Court finds merit in the contention that the income of the deceased having been proved to the extent of ₹ 8,000/-, there was no occasion for the travel allowance to be kept out of consideration. The said allowance was part of the regular package of income accruing to the deceased from the employment and would result in corresponding savings under the said head of expenditure regularly incurred (see MAC Appeal No. 1210/2012 *Shakuntla Gautam vs. Ravinder Kumar & Ors. decided on 17.3.2016).* Even otherwise, it is noted that the salary slip (Ex.P-5) indicates that the said allowance was ₹ 500/- and not ₹ 2,000/- as taken by the tribunal. For the foregoing reasons, the income of the deceased on which basis the loss of dependency is to be worked out is taken as ₹ 8,000/- per month.

6. There is merit in the submission of the claimants that in the case at hand there was irrefutable expenses that the income of the deceased was subject to periodic increase. The evidence of PW-3 and PW-4, read together, would show that the deceased was in the regular employment and

was entitled to revision of pay over the period [*K.R. Madhusudhan & Ors. vs. Administrative Officer and Anr. (2011) 4 SCC 689].* In these facts and circumstances, the factor of future prospects to increase to the extent of 50% must be added and, therefore, loss of dependency has to be computed by assessing the notional income at ₹ 12,000/- per month.

7. The claimant's argument that the deduction should have been to the extent of 1/4th on account of personal & living expenses, however, cannot be accepted in the face of admission by first claimant Poonam (PW-1) during cross-examination that her father-in-law (fourth claimant) was working for gain at Delhi Airport. In these circumstances, the number of dependants being less than 4, the deduction should have been to the extent of 1/3rd , as done by the tribunal. In this view, the loss of monthly dependency comes to ₹ 8,000/-. On the multiplier of 18 (the deceased being 23 years old), the total loss of dependency comes to (8,000 x 12 x 18) ₹ 17,28,000/-

8. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, compensation in the sum of ₹1 lakh each on account of love & affection and loss of consortium and ₹25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case is computed as (17,28,0000 + 2,50,000) ₹ 19,78,0000/-. The compensation is enhanced accordingly. Needless to add it shall carry interest as levied by the tribunal.

9. The tribunal had apportioned the compensation by specifying the amounts falling to the share of each of the claimants. In these

circumstances, it is directed that the entire enhanced portion of the compensation shall fall to the share of Poonam (first respondent-claimant).

10. The counsel for the insurance company was arguing against the record when he submitted that the opportunity for evidence was closed even though steps had been taken for summoning of the witness from the office of licensing authority, Mathura. The proceedings recorded on 12.3.2012 show that the counsel for the insurance company himself had closed his evidence. It is expected that arguments are raised bearing in mind the proceedings recorded.

11. Be that as it may, during the pendency of the appeal, an application has been moved (CM No. 13791/2012) under Order 41 Rule 27 of the Code of Civil Procedure, 1908 (CPC), *inter alia* seeking permission for additional evidence to be adduced in support of the plea that the driving license shown by the driver Raju Lal Meena (fifth respondent in MAC Appeal No. 872/2012) was a fake document. The learned counsel for the claimants submitted that he has nothing to say on the said request.

12. It is noted that during the pendency of appeal Ameena Khan (sixth respondent in MAC Appeal No. 872/2012) died on 14.2.2013. If the contention of the insurance company with regard to the driving license is correct, it would deserve recovery rights to be granted against the registered owner and the driver of the offending vehicle on whose account it has been burdened with the responsibility to satisfy the award of compensation granted in this case. By the application under Order 22 Rule 4 CPC (CM No. 13830/2013) moved with an application seeking condonation of delay under Section 151 CPC (CM No. 13831/2013), a prayer has been made for

the legal heirs of Ameena Khan to be substituted in her place. The said legal heirs though served and having appeared at hearing on these appeals on some of the previous dates through counsel, have failed to appear to assist at the time of final hearing in these matters today. It bears repetition here that during hearing on the claim case before the tribunal it was submitted on behalf of the registered owner and the driver of the offending vehicle that the driving license relied upon was a genuine document, in support of which form 54, purporting to have been issued by licensing authority, Mathura, was also submitted on record.

13. The fact remains that both the insurer, on one hand, and the driver and owner, on the other, failed to bring proper proof on the subject of driving license during the inquiry before the tribunal. Since the insurer is seeking additional opportunity for adducing further evidence, in all fairness, such opportunity should also be made available to the parties which would be affected adversely on such account.

14. By order dated 13.08.2012 in MAC Appeal No. 872/2012, the insurance company had been directed to deposit the entire awarded amount with upto date interest with the UCO Bank, Delhi High Court, within the period specified. The amount, so deposited with the Bank, was kept in fixed deposit receipt for a period of six months to be renewed from time to time. By order dated 06.02.2013 , 75% of the awarded amount excluding lawyer's fee was allowed to be released as per the terms and conditions fixed by the tribunal.

15. The Registrar General is now directed to take steps to ensure that the amount is released to the claimants in terms of the award modified as above.

The direction about the payment of counsel fee being uncalled for is set aside.

16. The insurance company is directed to deposit with the tribunal within 30 days hereof the balance of award as modified above to be released to the claimants in terms of the judgment given.

17. The issue of genuineness or otherwise of the driving license of Raju Lal Meena (driver), fifth respondent in MAC Appeal No. 872/2012, is remitted to the tribunal for further inquiry and adjudication. The insurer, driver and the legal heirs of the registered owner, who stand substituted in her place, are directed to appear before the tribunal for such purposes on 28th April, 2016. The tribunal shall first give an opportunity to the insurer to lead further evidence in support of its contention pressing for recovery rights and thereafter grant an opportunity to the opposite contesting parties for leading evidence in rebuttal, if any, and thereupon take a fresh call on the issue and pass necessary directions.

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

19. Both appeals are disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 29, 2016/nk