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

Date of Decision: 31st March, 2016

+ **MAC.APP. 500/2011**

ORIENTAL INSURANCE CO LTD Appellant
Through Mr. Amit Gaur and Mr. Pradeep
Gaur, Advs.
versus

PREM KASHYAP & ORS Respondent
Through Mr. Ashok Popli, Adv. for R-1 to 3

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Mr. Ramesh Kumar, aged about 46 years, working as operator in Sangam Cinema suffered injuries in a motor vehicular accident that occurred at about 1 AM on 06.05.2001 involving three wheeler scooter bearing registration No.DL 1RE 7637 (TSR) admittedly insured against third party risk with the appellant insurance company (insurer) and died in the result. His widow two minor daughters and mother instituted an accident claim case under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) on 28.02.2011 which was registered by motor accident claims tribunal (tribunal) as suit No.220/2010. The driver, owner and insurer were impleaded in the said proceedings. The tribunal held inquiry and by judgment dated 24.03.2011 granted compensation in the sum of ₹9,07,875/- with interest at 7.5% per annum, calculating it, thus :

Loss of dependency	:	Rs. 8,62,875/-
Funeral Expenses	:	Rs. 10,000/-
Loss of love & Affection	:	Rs. 15,000/-
Loss of consortium	:	Rs. 10,000/-
Loss of estate	:	Rs. 10,000/-
TOTAL	:	Rs. 9,07,875/-

2. The insurance company had taken the plea that there was a breach of terms and conditions of the insurance policy which was upheld. Though the insurance company was directed to satisfy the award, it was granted recovery rights against the owner of the TSR.

3. By appeal at hand, the insurance company has questioned the computation of loss of dependency on the ground that future prospects have been wrongly factored in to the extent of 50% and that there is an error in the calculation. While referring to the dictum in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 the first contention raised is that the future prospects could not have been added. At the same time, it is submitted that having regard to the age of the deceased it could not have been more than 30%.

4. *Per contra*, the counsel for the claimants (first to fourth respondents) has submitted that the award of non-pecuniary damages and the rate of interest levied are inadequate.

5. The submission of the insurer against inclusion of the element of future prospects ignores the unrebutted evidence on record showing that the deceased was a regular employee of Sangam Theatres Pvt. Ltd., which was even granting him such benefits as gratuity, bonus etc. Having regard to the evidence of employment and the benefits accruing therefrom as proved by his widow (Prem Kashyap) through her unchallenged testimony, there can

be no doubt about the submission that the salary and allowance of the deceased would have been subject to periodic increase.

6. But, the tribunal has undoubtedly committed arithmetic errors in calculating the notional income for computing the loss of dependency. Further, going by the dictum in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, having regard to the age of the deceased, the element of future prospects should have been restricted to 30% only. There is merit also in the grievance of the claimants that the non-pecuniary heads of damages have not resulted in adequate awards. Therefore, the compensation is recalculated.

7. On the monthly income of ₹2,950/-, adding the element of future prospects of increase to the extent of 30% would mean the loss of dependency has to be worked out on notional income of $(2,950 \times 130 \div 100)$ ₹3,835/-. Since the number of dependents were four, $1/4^{\text{th}}$ has to be deducted towards personal and living expenses. Thus, the monthly loss of dependency is $(2,335 \times 3 \div 4)$ ₹2,876.25. On the multiplier of 13, the total loss of dependency comes to $(2,876.25 \times 12 \times 13)$ ₹4,48,695/- rounded off to ₹4,49,000/-.

8. 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 each on account of loss 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 $(4,49,000 + 2,50,000)$ ₹6,99,000/- rounded off to ₹7,00,000/-.

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 from the date of filing of the petition till realization.

10. The compensation was apportioned by the tribunal by granting 10% each to the second, third and fourth respondents and the balance to the first respondent (widow). The fourth respondent (mother) has since died and her name has been deleted from the array of parties. In these circumstances, it is directed that her share shall be made over to the first respondent (widow).

11. By order dated 27.05.2011, the insurance company had been directed to deposit ₹5,52,725/- with interest at 7.5% per annum with the Registrar General of this Court within the period specified whereupon 50% of the said amount was allowed to be released, the balance kept in fixed deposit receipt with nationalized bank initially for a period of one year.

12. The Registrar General shall now calculate the sums payable to the claimants and release the same with proportionate interest in their favour in terms of the aforementioned directions, refunding the excess, if any, with statutory deposit to the insurer. Conversely, if more amount is required to be paid, the insurer shall be duty bound to deposit the same with the tribunal within 30 days of this judgment whereupon it shall be released with interest accordingly.

13. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 31, 2016/VLD