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

Date of Decision: 25th January, 2016

\+ MAC.APP. 349/2010 & CM No. 10313/2010

ORIENTAL INSURANCE CO LTD ..... Appellant
Through: Mr. Pradeep Gaur, Adv.

versus

AKEEDA KHATOON & ORS ..... Respondents
Through: None

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The insurance company is in appeal and has pressed objection on the narrow issue of the income of the deceased and the deduction on account of personal and living expenses as factored in by the Motor Accident Claims Tribunal ("the Tribunal") while allowing the petition registered as suit No.568/2008 under Section 166 and 140 of Motor Vehicles Act, 1988 ("MV Act") in favour of the claimants (respondent No.1 to 8 herein) on account of death of Mohd. Umar in a motor vehicular accident that occurred at 4 AM of 10.06.2008 involving canter truck traulla bearing registration No.HR 38 C 8519 ("the offending vehicle"), by judgment dated 26.02.2010.

2. In the claim petition the ninth and tenth respondents herein were impleaded as driver and owner respectively of the offending vehicle

which was concededly insured against third party risk with the appellant company. The first respondent (the widow) examined herself as PW-1 on the basis of her affidavit (Ex.PW-1/A) to prove the requisite facts including the status and earnings of the deceased and the dependents. She also examined Surender Singh (PW-2), an eye-witness and the employer of the deceased, who testified on the strength of his affidavit (Ex.PW-2/A). The Tribunal accepted the claim that the deceased was earning ₹6,000/- per month at the time of his death. It also accepted the contention that the claimants (respondents No.1 to 8) were dependants and thus deducted 1/5th towards the personal and living expenses of the deceased in reaching the compensation amount of ₹10,72,000/-.

3. This Court does not find any substance in the objection as to the finding about the income. The evidence of PW-1 and PW-2 has virtually gone unchallenged except for bald suggestion that the income was wrongly stated, there was no further question of the witnesses. The learned Tribunal found the evidence worthy of reliance and this Court sitting in appeal finds no reason to disturb the said conclusion.

4. On the question of personal and living expenses, the argument raised is that the brothers and sister (the respondents No.4 to 8) could not conceivably be dependants. It is noted that the deceased was only 25 years old at the time of his death. The question of dependency was not even challenged at the inquiry. This issue cannot be allowed to be raised now in appeal. Thus, there is no error or illegality in the view taken by the Tribunal. The appeal is devoid of substance and is dismissed.

5. Statutory amount, if made, shall be refunded.

R.K. GAUBA
(JUDGE)

JANUARY 25, 2016
VLD