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

Date of Decision: 19.05.2016

+	MAC.APP. 75/2014

ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr. Amit Gaur and Mr. Pradeep Gaur, Advocates

Versus

SH ASHOK KUMAR & ORS ..... Respondents

Through: Mr. S.N. Parashar and Ms. Swati Sharma, Advocates for R-1 & 2

+	MAC.APP. 482/2014

ASHOK KUMAR & ORS ..... Appellants

Through: Mr. B.S. Randhawa, Advocate

Versus

ORIENTAL INSURANCE CO. LTD. ..... Respondent

Through: Mr. Amit Gaur and Mr. Pradeep Gaur, Advocates

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 03.06.2011, Raj Kumar, aged 28 years, serving in Indian Air Force in the rank of Corporal Trade Met. Assistant getting salary and allowances of Rs.24,623/- p.m. (Ex. PW1/B) was riding on the pillion of a

motor cycle bearing registration no.DL-10S-1264 (motor cycle) driven by the third respondent (driver-cum-owner). The motor cycle statedly met with an accident at Shahjahan Road, New Delhi and as a result of the injuries suffered, Raj Kumar died. His parents, first and second respondent (claimants) instituted an accident claim case (suit no.676/11) on 27.08.2011 seeking compensation impleading the driver-cum-owner of the offending vehicle and the appellant insurance company (insurer) as respondents, the latter having admittedly issued an insurance policy against third party risk for the period in question respecting the said vehicle.

2. The tribunal held inquiry and by judgment dated 07.11.2013, upheld the case of the claimants about death having occurred due to negligent driving of the offending vehicle by the third respondent. It awarded compensation in the sum of Rs.21,13,920/- with interest at the rate of 7.5% p.a. in favour of the claimants calculating it thus :

Loss of dependency	₹20,53,920/-
Funeral Expenses	₹25,000/-
Loss of Estate	₹10,000/-
Loss of Love and affection	₹25,000/-
Total	₹21,13,920/-

3. The insurer which has been burdened with the liability to satisfy the award is in appeal (MACA 75/14) submitting that there was a breach of the terms and conditions of the policy as the third respondent (insured) was driving the motor cycle under the influence of alcohol.

4. *Per contra*, the claimants by their appeal (MACA 482/14) submit that the award granted is inadequate. They pointed out that the income of the deceased as shown by the salary certificate (Ex. PW1/B) was not accepted and certain deductions made on the reasoning that these were allowances payable as compensation for attending duties and could not be treated as part of the salary which, in the submission of the claimants, is erroneous. The claimants also argue that the tribunal wrongly adopted the multiplier of 11 on the basis of the age of the claimant mother. It is their submission that the age of the deceased (28 years) should have regulated the choice of multiplier. The claimants are also aggrieved with the award under the non pecuniary heads of damages and the rate of interest.

5. The submission of the claimants about improper calculation of the salary and allowances must be accepted. The allowances which have been kept out as reflected by salary certificate (Ex. PW1/B) cannot be said to be compensation for attending duties. They are all allowances which were part of the terms of engagement of the deceased in the service of the Air Force and would be his regular income and, therefore, the computation of loss of dependency had to be made on the basis of income of Rs.24,623/- p.m.

6. Having regard to the fact that the deceased was in regular Government service, keeping in view his age and the prospective rise that he would be earning in income, future prospects to the extent of 50% have to be added and, at the same time, deduction to be made to the extent of 50% towards personal and living expenses.

7. The argument of the claimants, however, with regard to the choice of multiplier cannot be accepted. It is well settled that the multiplier has to be

picked up as per the age of the deceased or that of the claimant whichever is higher. [*G.M. Kerela SRTC vs Susamma Thomas* (1994) 2 SCC 176; *U.P.S.R.T.C. vs Trilok Chandra* (1996) 4 SCC 362]

8. Thus, the loss of dependency is recomputed as (₹24,623/2 x 150/100 x 12 x 11) ₹24,37,677/-, rounded off to ₹24,38,000/-.

9. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, the non-pecuniary damages in the sum of ₹1 Lakh towards loss of love and affection and ₹25,000/- each for funeral expenses and loss to estate are added. Thus, the total compensation in the case comes to (₹24,38,000/- + ₹1,50,000) ₹25,88,000/-.

10. 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 petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.].

11. The award is modified accordingly. It shall be apportioned in the manner directed by the tribunal.

12. The tribunal was not impressed with the plea about breach of terms and conditions of the insurance policy on the ground that the insurer did not lead any evidence to prove that the driver-cum-owner of the offending vehicle was under the influence of alcohol. Mere indication of this to be a possibility in the copy of the charge sheet on record cannot suffice. The fact had to be proved by positive evidence, and no effort having been undertaken in this regard, the plea must be rejected.

13. By order dated 24.01.2014, the insurance company had been directed to deposit the entire awarded amount with upto date interest with the Registrar General of this court, from which 80% was allowed to be released in favour of the claimants, the balance kept in fixed deposit with the UCO Bank, Delhi High Court Branch, New Delhi. The Registrar General shall release the balance as well to the claimants. The insurance company shall pay the enhanced portion of the award including on account of interest by requisite deposit with the tribunal within 30 days making it available to be released to the claimants.

14. Statutory deposit, if made, by the insurer, shall be refunded.

15. Both appeals are disposed of in above terms.

(R.K. GAUBA)
JUDGE

May 19, 2016
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