$~4

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

% **<u>Date of Decision: 17th October, 2016</u>**

\+ MAC.APP. 546/2013

UNITED INDIA INSURANCE CO. LTD. ..... Appellant
Through: Ms. Suman Bagga and Mr. Pankaj Gupta, Advocates

versus

SUPRIYA DEY & ORS. ..... Respondents
Through: Mr. Navneet Goyal and Ms. Sneha Savant, Advocates for respondents No.1 & 2.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs.5,74,792/- has been awarded to respondents No.1 and 2. The accident dated 07th September, 2012 resulted in the death of Gopal Chandra Dey. The deceased was aged 63 years at the time of the accident and was self-employed earning Rs.15,000/- per month. The Claims Tribunal took minimum wages of Rs.9,282/-, deducted 1/3rd towards his personal expenses and applied the multiplier of 7 to compute the loss of dependency of Rs.5,19,792/-. The Claims Tribunal awarded Rs.25,000/- towards loss of love and affection, Rs.10,000/- towards loss of consortium, Rs.10,000/- towards loss of estate and Rs.10,000/- towards funeral expenses. The total

compensation awarded is Rs.5,74,792/-.

2. Learned counsel for the appellant urged at the time of the hearing of the appeal that the offending vehicle was not involved in the accident. It is submitted that PW-2 mentioned vehicle No.DL-1PC-3013 in the FIR. It is further submitted that the appellant examined RW-1 and RW-2 in support of its defence that the offending vehicle was not involved in the accident.

3. The Claims Tribunal has considered the evidence led by both the parties. Although FIR mentions offending vehicle No.DL-IPC-3013, PW-2 in his statement under Section 161 Cr.P.C. gave the correct No.DL-1PC-1310 on the basis of which the driver of the offending vehicle was chargesheeted by the police. PW-2 gave the same number of the offending vehicle in his deposition before the Claims Tribunal. The Claim Tribunal gave a finding that the recording of wrong vehicle number in the FIR appears to be a clerical error since PW-2 consistently mentioned the offending vehicle DL-IPC-1310 in his statement before the Claims Tribunal as well as in the statement under Section 161 Cr.P.C. before the police. There is no infirmity in the finding of the Claims Tribunal with respect to involvement of the offending vehicle.

4. Learned counsel for the appellant next submits that the personal expenses of the deceased be enhanced from one-third to one-half considering that the deceased has left behind his widow as the only dependent person. This Court is of the view that personal expenses of a person are taken as 50% only in cases of unmarried persons. In case of married persons, the personal expenses of the deceased are taken as

one-third to one-fifth, depending upon the number of dependent family members left by the deceased. That apart, the reduction of the quantum of compensation is not warranted considering that the Claims Tribunal has awarded compensation on a lower side for loss of love and affection, consortium, as well as loss of estate.

5. Learned counsel for the appellant next submits that the penal interest of 12% be set aside as the appellant had filed the appeal before this Court. There is merit in the last contention urged by learned counsel for the appellant. The penal interest of 12% imposed by the Claims Tribunal is set aside in view of the appeal filed by the appellant before this Court.

6. The appeal is partially allowed to the extent that the penal interest of 12% is set aside. The appellant has deposited the entire award amount with the Registrar General of this Court in terms of the order dated 02^{nd} July, 2013 out of which 70% amount has already been released to respondents No.1 and 2 and the balance amount is lying in FDR.

7. The Registrar General is directed to instruct UCO Bank, Delhi High Court Branch to release 25% of the amount lying in FDR to respondent No.1 and keep the balance 75% amount in three fixed deposits of equal amount for the period of 1 year, 2 years and 3 years in the name of respondent No.1.

8. Monthly interest on the FDRs of respondent No.1 shall be credited in her individual savings bank account.

9. At the time of maturity, the fixed deposit amount shall be credited in the savings bank account of the beneficiary.

10. All the original FDRs shall be retained by UCO Bank, Delhi High Court Branch. However, the photocopies of the same shall be provided to the respondent.

11. No cheque book or debit card be issued to the claimant/respondent without permission of the Court.

12. No loan or advance or pre-mature discharge shall be permitted without the permission of this Court.

13. The claimant/respondent shall approach the UCO Bank, Delhi High Court Branch for disbursement of the award amount in terms of this order.

14. UCO Bank, Delhi High Court Branch shall ensure that the savings bank account of respondent No.1 is individual account and not joint account.

15. The statutory deposit be refunded back to the appellant.

16. Copy of this judgement be given *dasti* to counsels for the parties under signatures of the Court Master.

J.R. MIDHA, J.

OCTOBER 17, 2016
rsk