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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 14th March, 2016

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MAC APPEAL No.665/2012 & CM No. 10908/2012

ORIENTAL INSURANCE CO. LTD.

.... Appellant

Through: Mr. J.P. N. Shahi, Adv.

Versus

SUNITA CHOPRA & ORS.

.... Respondents

Through: Mr. Awnish Kumar, Adv. for R-4.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Dhruv Chopra, then aged 22 years, died in a motor vehicular accident that occurred at about 9.00 p.m. on 15.05.2006 involving truck bearing No. HR 38D 0304 (the offending vehicle) which was admittedly insured against third party risk with the appellant insurance company (insurer). The first and second respondents (hereinafter referred to as the claimants), the parents of the deceased preferred a claim petition under Sections 166 and 140 of Motor Vehicles Act, 1988 (MV Act) on 08.04.2009, which was registered as MACT Petition No. 181/2009. The third and fourth respondents herein, the driver and owner/insured in respect of the offending vehicle were impleaded as parties to the claim petition, in addition to the insurer. The tribunal, by judgment dated 04.04.2012 granted compensation in the sum of ₹ 7,05,684/- with interest calculated the compensation as under:-

(a) Claim towards compensation	:	₹6,53, 184/-
(b) Claim towards Funeral expenses	:	₹ 7,500/-
(c) Loss of Estate	:	₹ 10,000/-
(d) Loss of consortium/love affection:		₹ 35,000/-
Total	:	₹ 7,05,684/-

2. The insurance company had *inter alia* taken the plea that there had been a breach of terms and conditions of the insurance policy as the driver of the offending vehicle was not authorized to drive the transport vehicle in question carrying hazardous goods. This contention was upheld and the insurance company, though directed to pay the compensation to the claimants was granted recovery rights against fourth respondent herein (the owner/insured).

3. The insurer by the appeal at hand, challenges the computation of compensation mainly on the ground that the element of future prospects was wrongly added and the multiplier of 18 was wrongly adopted on the basis of age of the deceased (22 years) ignoring the fact that the claimants are parents (whose average age was 44 years), in the case of compensation for bachelor's death.

4. The claimants had submitted before the tribunal that the deceased was working with a private company M/s SRS Human Resources Pvt. Ltd. with salary of ₹ 13,000/- per month. The document purporting to be salary certificate, was produced on record (mark A), but the tribunal was not satisfied as no formal evidence was adduced. In these circumstances, the

tribunal adopted ₹ 3,024/-/- as the notional monthly wages on the basis of minimum wages payable to a graduate at the relevant point of time. It, however, proceeded to compute the compensation by adding the element of future prospects. The insurance company contends that this was impermissible as there was no proof of progressive increase in the income.

5. On careful appraisal of evidence on record, this Court finds no substance in the contention urged. The evidence adduced by the claimants includes the statement of Mukesh Chopra (PW-2) on the strength of his affidavit (PW -2/1) which indicated the salary structure of the company where the deceased was an employee. Given such material on record and the educational qualifications of the deceased, it cannot be believed that his income would not have increased progressively in future. Thus, no error is found in calculation of the income with element of future prospects having been factored in.

6. There is, however, merit in the contention with regard to the multiplier. The accident had occurred on 15.05.2006. As per the voter identity card (page 163 of the tribunal's record) of the father (second respondent) he was 38 years old on 18.10.95 which would mean his age would be 49 years when the death occurred. According to the voter identity card (page 165 of the tribunal's record) of the mother (first respondent) she was 32 years on 20.4.95. This would mean that she would be 43 years old at the time of the death. The average age of the parents, thus, was 46 years. It is well-settled that the age of the deceased, or that of the surviving dependants, whichever is higher, has to be the basis for adopting the multiplier [*G.M. Kerela SRTC vs Susamma Thomas* (1994) 2 SCC 176;

U.P.S.R.T.C. vs Trilok Chandra (1996) 4 SCC 362; *New India Assurance Co. Ltd. vs Charlie* AIR 2005 SC 2157; *New India Assurance Co. Ltd. vs Shanti Pathak (Smt.) & Ors.*, (2007) 10 SCC 1; *Ramesh Singh & Anr. vs Satbir Singh & Anr.* (2008) 2 SCC 667; *National Insurance Company Ltd. vs Shyam Singh & Ors.* (2011) 7 SCC 65; *Ashwinbhai Jayantilal Modi vs Ramkaran Ramchandra Sharma & Anr.* (2015) 2 SCC 180]

7. Thus, the loss of dependency has to be worked out on the basis of multiplier of 13 rather than 18 as done by the tribunal. In this view, the loss of dependency is calculated as (3,023 X 12 X 13) ₹ 4,71,588/- rounded off to ₹ 4,72,000/-.

8. It is noted that the tribunal awarded ₹ 7,500/- towards funeral expenses, ₹10,000/- towards loss of estate, ₹ 35,000/- towards loss of consortium/love & affection. In a case of bachelor where the compensation has been claimed by the parents, there was no occasion for use of the expression “loss of consortium”. 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 sum of ₹ 1,00,000/- towards loss of love & affection and ₹25,000/- towards funeral expenses and loss to estate would have been appropriate. Therefore, the compensation in the case at hand is re-calculated as ₹ (4,72,000 + 1,00,000 + 25,000 + 25,000) ₹ 6,22,000/-.

9. The compensation is reduced accordingly. It shall carry interest as levied by the tribunal.

10. By order dated 03.07.2012, the insurance company had been directed to deposit the awarded compensation with upto date interest in the name of the claimants with UCO Bank, Delhi High Court branch whereupon the recovery by execution was stayed. The amount thus deposited was directed to be kept in a fixed deposit initially for a period of six months to be renewed from time to time. Registrar General is directed to calculate the amounts payable to the claimants in terms of the award modified as above and release the same to the claimants, refunding the balance to the insurance company with statutory deposit, if made.

11. The appeal stands disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 14, 2016

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