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

Date of Decision: 16th February, 2016

\+ MAC.APP. 423/2008

ORIENTAL INSURANCE COMPANY LTD ..... Appellant

Through: Mr. Abhishek Kumar Gola, Adv.

versus

ASHWANI KHANNA & ORS ..... Respondents

Through: Mr. Sanjeev G. Sareen, Adv.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The insurance company by appeal at hand questions the computation of compensation by the motor accident claims tribunal (the tribunal) by judgment dated 01.04.2008 in claim petition of the second to sixth respondents (the claimants), registered as petition no.482/2006, arising out of death of Satish Ghai in a motor vehicular accident that occurred on 20.11.2005 near Petrol Pump, GTK Road, involving car bearing registration no.DL-3CK-8257, driven by the first respondent herein, the said offending vehicle being concededly insured against third party risk with the appellant/the insurance company.

2. The tribunal was not satisfied with the evidence led to prove negligent driving on the part of the first respondent. It took recourse to Section 163-A of the Motor Vehicles Act, 1988 (the MV Act) to compute the compensation awarded (₹11,66,666/- with interest @ 7.5%

per annum) even though the petition had been filed for compensation under Section 166 read with Section 140 the MV Act. It is this approach which has become the bone of contention through the appeal at hand.

3. During the course of hearing, the learned counsel for the claimants submitted that he is agreeable if loss of dependency is recomputed strictly in accord with the second schedule appended to the MV Act in terms of Section 163-A, adopting the notional income of the deceased at ₹40,000/- per annum only. He at the same time, submits that there is need for further correction as the tribunal did not consider grant of any compensation on account of loss of consortium, failing to note that the widow of the deceased is one of the claimants.

4. With consent of both sides, the compensation is, recomputed. The claimants being five in number, deduction on account of personal and living expenses will have to be restricted to twenty five percent (25%). Since the deceased was 39 years old at the time of the accident, loss of dependency has to be computed on the multiplier of 15 [*Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121]. Therefore, loss of dependency is calculated at (30,000x15) ₹4,50,000/-.

5. The tribunal had awarded ₹80,000/- towards loss of love & affection and ₹20,000/- towards funeral expenses. The grievances of the claimants with regard to non-consideration of award of loss of consortium is justified. Thus, another sum of ₹80,000/- is added towards loss of consortium. The total compensation is computed at ₹6,30,000/-.

6. The tribunal had granted interest only at seven & half percent (7.5%) per annum from the date of institution of the petition till actual deposit. Having regard to the consistent view taken by Supreme Court [*Kaushnuma Begum vs New India Assurance Co. Ltd.* (2001) 2 SCC 9; *Supe Dei vs National Insurance Co. Ltd.* (2009) 4 SCC 513; *Municipal Corporation of Delhi, Delhi vs Association of Victims of Uphaar Tragedy and Ors.* (2011) 14 SCC 481; *Basappa vs T. Ramesh* (2014) 10 SCC 789; *Syed Sadiq etc. vs Divisional Manager, United India Ins. Company* (2014) 2 SCC 735; *Surti Gupta vs United India Insurance Company and Ors*. 2015 (3) SCALE 795; *Kumari Kiran vs Sajjan Singh* (2015) 1 SCC 539] rate of interest is increased to nine percent (9%) from the date of filing of petition (05.04.2006) till realization.

7. The award is, accordingly, modified.

8. The tribunal had given certain directions about the apportionment of the awarded compensation. ₹75,000/- each had been granted to the claimants other than the widow and the balance ordered to be released in her favour.

9. By order dated 06.11.2008, the insurance company had been directed to deposit seventy five percent (75%) of the awarded amount with interest in the name of the Registrar General within the period specified and the claimant had been allowed to withdraw fifty percent (50%) of such deposit.

10. By order dated 26.02.2009, however, it was noted that the appellant had deposited the entire amount with interest with the Registrar General on 10.02.2009. The learned single judge then in seisin of the matter directed the Registrar General to transfer the said

deposited amount to the tribunal within the period specified and, upon such transfer, the tribunal was directed to release seventy five per cent (75%) in favour of sixth respondent (the mother of the deceased) and ₹3,50,000/- alongwith proportionate interest to the second respondent (widow of the deceased). The balance amount was directed to be deposited in four fixed deposit receipts, three in the names of third to fifth respondents in the sum of ₹75,000/- with proportionate interest and remaining in the name of second respondent with proportionate interest. The tribunal was directed to retain the said four FDRs as security till disposal of the appeal though the second respondent (widow) was allowed to draw interest from such deposits.

11. Since compensation has been reduced, the apportionment needs to be re-considered. Having regard to the amounts already released to the second to six respondents herein (i.e. widow and mother respectively of the deceased), it is directed that the balance amount now payable in terms of the reduced award shall be apportioned equally amongst the children i.e. third to fifty respondents respectively. Needless to add that the amount to be thus released shall include share in the principal and interest corresponding thereto.

12. The statutory deposit, if made, shall be refunded.

13. The appeal stands disposed of in above terms.

R.K. GAUBA
(JUDGE)

FEBRUARY 16, 2016/ssc