$~R-14

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

Date of Decision: November 16, 2016

\+ **<u>MAC.APP. 333/2009</u>**

ORIENTAL INSURANCE COMPANY ..... Appellant

Through: Mr. Onkar Nath, Advocate

versus

ISHRAWTI & ORS. .....Respondents

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

<u>JUDGMENT</u>

% **(ORAL)**

Impugned Award of 15th May, 2009 grants compensation of ₹12,53,820/- with interest to the legal heirs of deceased-*Bechu Prasad* aged 52 years, who had sustained fatal injuries in a road accident on 22nd November, 2003. At the time of the accident, the deceased was working as a Head Constable in Delhi Police and was earning around ₹10,000/- per month.

The factual background of this case is not in dispute and hence, it needs no reproduction.

Learned counsel for appellant submits that contesting respondents no. 1 to 4 and 7 & 8 are duly represented and it is so evident from the last order. The *power of attorney/vakalatnama* of learned counsel for contesting respondent is not on record. In such a situation, it is deemed appropriate to decide the appeal on merits, as issuance of court notices to respondents, who are already served, would unnecessarily delay the decision in this appeal, which is more than seven years old.

The challenge to the impugned Award by learned counsel for appellant is on the ground that *'future prospects'* cannot be presumed and the income of deceased could not have been doubled, as has been done by learned Tribunal. Reliance is placed upon Supreme Court's decision in *Reshma Kumari and Others v. Madan Mohan and Another,* (2013) 9 SCC 65 wherein addition of 50% to the actual salary was made towards *'future prospects'* where the deceased had a permanent job and was below the age of 40 years. Thus, it is submitted that the grant of *'future prospects'* is wholly unjustified. Lastly, it is submitted that the grant of ₹10,000/- towards the *'funeral expenses'* is on the higher side and it should be ₹5,000/- per month and the awarded amount deserves to be suitably reduced. Nothing else is urged on behalf of appellant.

Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that the observations made by learned Tribunal in the impugned Award to the effect that *'future prospects'* are inherent is unjustified as *'future prospects'* cannot be presumed. It is true that in view of the decision of Supreme Court in *Reshma Kumari (supra)*, no addition should be made towards *'future prospects'* where the age of deceased is more than 50 years. However, the inflation aspect and the income of a permanent government employee has to be considered till the age of his retirement. Learned Tribunal has erred in holding that the deceased would have been earning while in government service for a period of 11 years because while taking the age of the deceased to be 52 years, at the time of the accident, it had to be kept in mind that his remaining service would not have been more than eight years. Infact, learned Tribunal has not added any percentage towards the *'future prospects'* and has assessed the average annual dependency while relying upon Supreme Court's decision in *Sarla Dixit v. Balwant Yadav,* AIR 1996 SC 1274 and *General Manager, Kerala State Road Transport Corporation v. Susamma Thomas & Others,* (1994) 2 SCC 176. The reasoning adopted by learned Tribunal is as under: -

> *"……..Taking into account the method laid down in Sarla Dixit v. Balwant Yadav,* AIR 1996 SC 1274 and *General Manager, Kerala State Road Transport Corporation v. Susamma Thomas & Others, the income of the deceased at the time of his death should be minimum be doubled so as to get the income which he would have been earning after 11 years. Thus this figure comes out to Rs.19,376/-. Now, the average of these two have to be taken for assessing the average income of the deceased. It comes out to Rs.14,532/-. Out of this 1/3rd is required to be deducted on account of personal expenses of the deceased. Thus, after deducting Rs.4,844/- on account of personal expenditure the average annual dependency to the petitioners come to Rs.14,532/- - Rs.4,844/- = Rs.9,688/- X 12 = Rs.1,16,256/-."*

The only calculation error in the reasoning adopted by the learned Tribunal is that instead of 8 years, period of 11 years has been taken. In any case, this error of calculation would not be material because in financial terms, there would be not much difference in the amount assessed and so, in the peculiarity of this case, this Court is not inclined to reduce the awarded amount.

Regarding the funeral expenses, this Court finds that grant of ₹10,000/- towards the *'funeral expenses'* is not unjustified. On the aforesaid reasoning, impugned Award is not interfered with.

This appeal is accordingly disposed of while making it clear that this judgment will not be treated as a precedent as it is rendered in peculiarity of this case.

(SUNIL GAUR)
JUDGE

NOVEMBER 16, 2016
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