$~R-94 & R-95

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

Date of Decision: 16th May, 2016

\+ MAC.APP. 645/2007

THE ORIENTAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. Pankaj Seth, Advocate

versus

MONICA & ORS ..... Respondents

Through: Mr. Gagan Mathur and Mr. Varun Kumar, Advocates

\+ MAC.APP. 684/2007 and CM No.16488/2007

MONICA SAXENA AND ANR. ..... Appellants

Through: Mr. Gagan Mathur and Mr. Varun Kumar, Advocates

versus

RAM BIR SINGH AND ORS. ..... Respondents

Through: Mr. Pankaj Seth, Adv. for R-3

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Manish Saxena, then 35 years old, died as a result of the injuries suffered in a motor vehicular accident that occurred on 27.11.2001 when a motor cycle bearing registration no.DL-3S-2516 (motor cycle) driven by him was hit from the rear side by a bus bearing registration no.DL-IP-5873 (offending vehicle), the latter admittedly insured against third party risk with Oriental Insurance Co. Ltd. (appellant in MAC A 645/2007). His wife and minor child (appellants in MAC A 684/2007) instituted an accident claim case (petition no.515/2004, old suit no.329/02) on 04.06.2002 seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988, impleading the insurer, driver and owner of the offending vehicle / bus as respondents, in addition to the parents of the deceased.

2. The tribunal held inquiry and, by judgment dated 19.07.2007, upheld the case that death had occurred due to negligent driving of the bus. This finding has attained finality as it was not challenged further. By the said judgment, the tribunal awarded Rs.7,45,000/- as compensation with interest at the rate of 6% p.a. from the date of filing of the petition till realization, the said amount being inclusive Rs.7,20,000/- towards dependency loss, Rs.5,000/- towards funeral expenses and Rs.20,000/- towards loss of love and affection.

3. The insurer which was burdened with the liability to pay has come up with the appeal (MACA 645/2007) questioning the computation of compensation.

4. By their appeal (MACA 684/2007), the claimants seek enhancement of the compensation. It may be added here that during the pendency of these appeals, the mother of the deceased has expired and on the applications (CM 15091-92/2008), her legal heirs including the claimants before the tribunal were substituted. It is noted that the tribunal had found the income of the deceased to be Rs.6,000/- and on that basis computed the loss of dependency at Rs.4,000/- p.m. The tribunal applied the multiplier of 15. The claimants are also aggrieved with the choice of multiplier and relies upon *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.,* (2009) 6 SCC 121.

5. The insurer presses its appeal to question the choice of multiplier submitting that 12 would have been the appropriate multiplier in terms of the judgment of the Supreme Court in Managing Director, TNSTC Ltd. Vs. *K.I. Bindu & Ors., 2006 ACJ 423 and UPSRTC Vs. Krishna Bala and Ors., 2006 ACJ 2114.*

6. Having regard to the ruling in *Sarla Verma* (supra) which now governs the field, it is found that the dependency loss had to be calculated on the multiplier of 16. Thus, the loss of dependency comes to (Rs.4,000 x 12 x 16) Rs.7,68,000/-.

7. Having regard to the date of death, following the view taken by this court in M*adhu Marwaha & Anr vs. Dal Chand & Anr., FAO 102/2001*, decided on 01.02.2016, which is referred by the counsel for the claimants, the non-pecuniary damages in the sum of Rs.50,000/- each towards loss of consortium and loss of love and affection and Rs.10,000/- each towards funeral expenses and loss to estate are added. Thus, the total compensation in the case comes to (Rs.7,68,000/- + Rs.1,20,000) Rs.8,88,000/-.

8. 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*.].

9. The award is modified accordingly.

10. It is noted that the father of the deceased was not granted any share in the compensation since he was found to be a pensioner and thus not financially dependent. Though an amount of Rs.1 Lakh was awarded to the mother, the balance was apportioned in favour of the widow and the minor child of the deceased.

11. It is noted that by order dated 09.01.2008 in MACA 645/2007, the insurer had been directed to deposit the entire awarded amount with the Registrar General of this court, within the period specified, from which 50% was allowed to be released to the claimants. Since the mother of the deceased died on 16.04.2008, it is directed that the amount already released in her favour shall now be treated as the share apportioned to her, the entire balance now lying in deposit to go to the widow and the child of the deceased only. The Registrar General shall calculate the amount payable to the claimants (widow and child of the deceased) under the modified award and release the same from the balance lying in deposit. Since the compensation has been increased, the insurer shall deposit the balance of its liability by requisite deposit with the tribunal within 30 days of this judgment making it available to be released.

12. Statutory deposits, if made, shall be refunded.

13. Both appeals and the pending application stand disposed of in above terms.

R.K. GAUBA
(JUDGE)

MAY 16, 2016
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