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

Date of Decision: 02nd March, 2016

\+ **MAC.APP. 1105/2011**

ORIENTAL INSURANCE COMPANY LTD ..... Appellant

Through: Mr. Navneet Goyal & Ms. Roopika Singh, Advs.

versus

DN VIRMANI AND ORS ..... Respondents

Through: Mr. A. K. Soni, Adv.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The insurance company (the appellant) was directed by the motor accident claims tribunal (the tribunal), by judgment dated 30.07.2011 in accident claim case registered as 606/2010, to pay compensation in the sum of ₹27,68,200/- with interest at the rate of nine percent (9%) per annum from the date of filing of the petition, to the first to third respondents (the claimants) on account of death of Deepanshu Virmani in a motor vehicular accident that had occurred on the night of 23/24.11.2007 involving rash/negligent driving of truck bearing registration no.HR-38E-5632 (the offending vehicle) concededly insured with it against third party risk, for the period in question, after finding had been recorded that the said offending

vehicle owned by the firth respondent (the owner) was driven in rash/negligent manner by the fourth respondent (the driver).

2. Though the insurance company filed this appeal on various grounds, at the hearing it is pressed only on the ground that there was no proof adduced by the claimants as to the rash/negligent driving of the truck and that the element of future prospects has been wrongly added while calculating the loss of dependency.

3. During the course of proceeding arising out of this appeal, the claimants have placed on record certified copy of the statement of Gunjan Khurana who was a passenger in the car bearing registration no.DL-9CM-9532 which was driven by the deceased at the time of accident. Gunjan Khurana made the statement as prosecution witness no.2 in the course of proceedings arising out of the criminal case registered on conclusions of investigation into first information report (FIR) no.805/2007 of police station Vasant Kunj (North) which has been registered in respect of the vehicular accident which is subject matter of the case at hand. Gunjan Khurana as PW2 in the said case, affirmed the requisite background of the fact which had led to collision between the car and the truck bringing out the rash driving of the latter vehicle by its driver. Since the said document was taken on record with consent of the appellant/insurance company, the counsel fairly conceded that the said material does provide the missing link in the evidence on the subject of negligence that was adduced before the tribunal.

4. In above view, main ground pressed by the insurance company is with regard to the element of future prospects. On this issue, the contention of

the insurance company must be noted only to be rejected. The evidence brought before the tribunal clearly showed that the deceased, a 24 years old person, had successfully completed degree course of bachelor of dental surgery. He was thus, on the threshold of practice as dental surgeon. In these circumstances, the assessment of the income, including about prospective increase in future has been correctly dealt with by the tribunal in the impugned judgment.

5. The appeal is devoid of substance and is liable to be dismissed.

6. By order dated 08.12.2011, the insurance company was called upon to deposit the awarded amount with up-to-date interest with the Registrar General of this court within the period specified, out of which forty percent (40%) was allowed to be released. It is now directed that the balance shall also be released to the claimants in terms of the impugned judgment.

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

8. The appeal is disposed of in above terms.

R.K. GAUBA
(JUDGE)

MARCH 02, 2016
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