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

Date of Decision: 29th February, 2016

\+ **MAC.APP. 1006/2013**

ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr. L. K. Tyagi, Adv.

versus

JYOTI & ORS ..... Respondents

Through: Mr. Arun Nischal, Adv. for R-1 to R-4.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 03.09.2009 at about 07:30 PM at Gopal Pur Road crossing of Rohtak Road within the jurisdiction of police station Kharkhoda, District Sonepat (Haryana), an accident occurred involving two wheeler scooter bearing registration no.DL-8S-3126 driven by Virender Singh and a tractor-trolley described as vehicle bearing no.HR-10L-3264 resulting in injuries being suffered by Virender Singh who died in the consequence. His widow, minor daughter and parents (first to fourth respondents) filed a claim petition under Sections 166 & 140 of the Motor Vehicles Act, 1988 (the MV Act) before the motor accident claims tribunal (the tribunal) where it was registered as MACT case no.230/2009/2013. The fifth and sixth respondent herein were impleaded on the grounds that they are the owner and driver of

the tractor-trolley while the appellant herein was impleaded as a party respondent since the tractor was insured with it against third party risk for the period in question.

2. The tribunal, by judgment dated 27.09.2013, awarded compensation in the sum of ₹18,69,001/- with interest at the rate of nine percent (9%) per annum from the date of filing the petition till realization.

3. The insurance company has come up in appeal raising the issue of involvement of the trolley which was insured with it, contending that the accident had occurred, per the evidence adduced, only on account of wrong parking of the trolley in the middle of the road and that in absence of evidence showing a connection between the tractor, which was subject matter of insurance and the trolley, which was not, the insurance company cannot be called upon to indemnify.

4. The insurance company also argues that the income of the deceased has been wrongly assumed to be ₹11,000/- for working out the loss of dependency on the basis of salary certificates Ex.PW1/A & Ex.PW1/B which were not proved in accordance with law. It is further submitted that the award of ₹50,000/- on account of loss of gratuitous services was wholly improper as there is no precedent for such award being granted in cases of death. The insurance company further questions the multiplier of 18 which was adopted in the case of death of a 27 years old person.

5. The argument about the non-involvement of the tractor in the fatal accident must be rejected. The tribunal has taken an appropriate view on the matter resting its conclusion on the basis of evidence of the claimant and

additionally by reliance on the evidence gathered during the investigation of the first information report (FIR) no.352/2009 which had been registered by the local police for offences punishable under Sections 283/337/304-A of Indian Penal Code, 1860 (IPC). The tribunal has noted that the trolley is shown by the said material to have been parked in the middle of the road without any indication and that the accident had occurred on the night of 03.09.2009 at 07:30 PM at Rohtak Road, Gopalpur road crossing, wherein the scooterist was taken by surprise on account of stationary trolley coming in his way. It is noted that in the written statement jointly filed by the owner and driver of the tractor-trolley, they did not dispute the connection between the trolley of the tractor which was insured with the appellant/insurance company. They rather themselves pleaded that the tractor-trolley in question was at the scene of the accident on there being need to take out the wheel of the trolley for purpose of repairs. Though it was claimed on their behalf that the trolley was parked on the side of the road, the evidence accepted by the tribunal shows otherwise.

6. In above facts and circumstances, the finding of the tribunal that the accident had occurred due to negligence on the part of the driver of the tractor with which trolley would have moved to the place of occurrence must be upheld.

7. There is substance in the contentions of the insurance company that the income of the deceased has been wrongly assumed to be ₹11,000/- per month without salary certificates Ex.PW1/A & Ex.PW1/B being strictly proved. The multiplier was also wrongly adopted in as much as, per the dictum in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation &*

Anr., (2009) 6 SCC 121, appropriate multiplier would have been 17. The award of ₹50,000/- on account of loss of gratuitous services was also impermissible in case of death where the loss of dependency was worked out on the basis of income of the deceased.

8. Faced with the above situation, the learned counsel for claimants submitted, that the claimants may be given fresh opportunity before the tribunal to prove the income of the deceased in the nature of salary given by the housing society at Vishakha Enclave, Pitampura, Delhi and by Spring Field School Pitampura, Delhi where he was working as part time employee. He submitted that the appeal of the insurance company may be allowed and the impugned award of compensation may be set aside but the matter remitted for further inquiry in above nature. The learned counsel for the appellant/insurance company submitted no objection.

9. The appeal is allowed and the impugned judgment is set aside to the extent it calculated and awarded the compensation to the claimant. The matter to that extent is remitted for further inquiry to the tribunal during which the claimant will be entitled to lead additional evidence. Needless to add, the opposite parties will also be entitled to lead evidence in rebuttal.

10. The parties shall appear before the tribunal on 21st April, 2016.

11. By order dated 06.11.2013, the tribunal was directed to release sixty percent (60%) of the awarded amount in favour of the claimants and keep the balance in the form of fixed deposit receipt with UCO bank Delhi High Court branch, New Delhi for six months, to be renewed periodically. The amount thus released earlier shall be subject to adjustment against the award

of compensation that would be passed on completion of the further inquiry ordered as above. The balance lying in UCO Bank Delhi High Court branch New Delhi, shall presently be refunded to the insurance company alongwith statutory deposit, if made.

12. The appeal stands disposed of above terms.

R.K. GAUBA
(JUDGE)

FEBRUARY 29, 2016
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