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

Date of Decision: 3rd February, 2016

\+ **MAC.APP. 755/2011**

ORIENTAL INSURANCE CO LTD ..... Appellant
Through: Mr. Pradeep Gaur, Adv.

versus

SUMA SINGH & ORS ..... Respondents
Through: Mr. Navneet Goyal, Adv.

\+ **MAC.APP. 1176/2011**

SUMA SINGH & ORS ..... Appellants
Through: Mr. Navneet Goyal, Adv.

versus

ORIENTAL INSURANCE CO LTD ..... Respondent
Through: Mr. Pradeep Gaur, Adv.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Both these appeals under Section 173 of Motor Vehicles Act, 1988 (MV Act) are directed against judgment dated 28.2.2011 of Motor Accident Claims Tribunal (the tribunal) in motor accident claim petition no. 260/2010 and, therefore, have been taken up and heard together.

2. The claim petition had been initially filed by Abhijit Singh who had suffered injuries in a motor vehicular accident that occurred at about

9.15 am on 7.6.2007 on National Highway No.8, near Naval Officers' Mess, Delhi Cantt. area involving Tata Indica car bearing registration No. HR 55 ET 5472. (hereinafter referred to as the offending vehicle) owned by fourth respondent herein and driven by fifth respondent herein, the victim Abhijit Singh riding on a scooter bearing registration No. DL 8SA 4413, the offending vehicle having collided against it causing serious injuries to him. The offending vehicle was concededly insured with Oriental Insurance Company Ltd., (the appellant in MAC appeal No. 755/2011) which was impleaded as respondent No.1 in the claim petition.

3. Abhijit Singh remained hospitalized for different durations till he died as indoor patient on 21.9.2009. It is admitted on all sides that after the injuries suffered in the accident, he had been rendered paraplegic, unable to lead his normal life, unable to join duties with the company where he was employed at that point of time as Senior supervisor. On account of the condition in which he had been placed, he was constrained to take voluntary retirement from said service in 2008.

4. After the death on 21. 9.2009, the claim petition was taken over by the legal heirs of the deceased Abhijit Singh and on their request they were substituted as the claimants and the claim petition was treated as one seeking compensation on account of death.

5. The claim petition was inquired into and resulted in judgment dated 28.2.2011 by the tribunal awarding compensation in the sum of ₹ 54,18, 498/- with interest @ 7.5 % per annum from the date of filing of the petition (19.7.2007) till realisation holding the driver, owner and insurer liable to pay jointly and severally. The insurance company was directed to deposit the awarded amount within 30 days failing which it

would carry interest enhanced @ 12% w.e.f. 1.3.2011. In view of the observation (in para 14 of) the impugned judgment, no compensation was apportioned in favour of the married daughter (second respondent in MAC Appeal No. 755/2011), the awarded amount having been apportioned and duly protected by suitable directions in favour of the remaining claimants (wife and son).

6. The insurance company filed appeal (MAC Appeal No. 755/2011) questioning the calculation of compensation mainly raising grievances about the method of calculation of loss of dependency and seeking to point out that compensation on account of medical expenses had been granted even though the documents submitted show some of the bills to have been discounted.

7. During the pendency of the appeal of the insurance company, the claimants filed cross-objections (CM No. 20285/2011). The cross-objections were treated as independent appeal (registered as MAC Appeal No. 1176/2011). In their appeal (cross-objections), the claimants submitted grievance as to the non-grant of compensation for the period the victim had survived after the accident, contending that there was consequent loss of salary which should have been taken care of.

8. Having heard both sides at length, this Court finds no substance in the contentions of the insurance company as also the claimants with regard to the calculation of loss of dependency. The chronology of events noted above shows that after the accident had occurred on 7.6.2007, the victim had all but lost capacity to work for gain. He had suffered spinal injuries which had rendered him immobile unable to lead a normal life, leave alone any chance of resuming gainful employment.

He was rendered paraplegic and had to take voluntary retirement on 7th March, 2008. The documents clearly reveal that he remained hospitalised for most of the period he survived till death on 21.9.2009. Against this backdrop, while calculating the loss of dependency, the tribunal required to determine that there was 100% permanent disability and the calculations had to proceed on that basis. This is precisely what was done by the tribunal, and, therefore, the contention that loss of salary for the period of survival also should have been added is not correct.

9. The loss of dependency has been calculated by the tribunal in the following manner:-

> "*13. As per salary certificate Ex.PW-3/A, the deceased's pay was Rs.34,323/- per month. For one assessment year he paid tax of Rs.40,021/- vide certificate Ex.PW-3/G. The net salary comes out to Rs.34,323 X 12 Rs.4,11,876/- minus tax of Rs.40,021 = Rs.3,71,855/-. As claimants are 3, deduction for the personal expenses shall be 1/3rd and remaining comes out to Rs.3,71,855 - 3,71,855/3 = Rs.3,71,855 - Rs.1,23,951 = Rs.2,47,904/- per annum.*
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> *14. The date of birth of the deceased is mentioned as 21.6.53 on the salary slip Ex.PW-3/F. So, he was of 53 years on the date of accident. Multiplier shall be 11. He had to leave the job because he was in paralytic condition due to the injuries suffered in the accident. Hence, petitioners are entitled to Rs.2,47,904 X 11 = ₹.27,26,944/- for loss of income. Petitioner no.l has stated in affidavit in evidence itself that petitioner no.2 is her married daughter. Married daughters are not entitled to any compensation.*

10. This Court finds no error in the approach of the tribunal. The contention that the personal and living expenses should have been

deducted to the extent of 1/2 is also not correct, in the face of clear evidence that the wife and son were dependents.

11. The tribunal granted compensation for the expenditure on medical treatment in the sum of ₹ 25,31,554/-, this based on the consideration of the evidence by discussion in (para No. 10 and 11 of) the impugned judgment which reads as under:-

> *10. PW-6 Sh. Rakesh Kumar brought the copies of the treatment record of Sh. Abhijeet Singh as Ex.PW-6/A. Dr. Amit Narain stated that he was working with Sh.H.S.Chhabra, Senior Spine Consultant and Head of Deptt. for last two years. Sh. Abhijeet was examined by doctors on duty and PW-7 was one of the members of the team led by Dr.H.S.Chhabra. This witness identified the signatures of Dr. H.S.Chhabra, appearing on discharge summary Ex.P-12, Ex.P-13, Ex.P-14 & Ex.P-15.*
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> *11. As per discharge summary from Ex.P-12 to Ex.P-15, deceased remained hospitalized in Indian Spinal Injuries centre, Vasant Kunj from 26.9.2007 to 16.5.2008, from 18.8.2008 to 15.9.2008, from 15.9.2008 to 26.11.2008 and in City Hospital (a unit of Sir Ganga Ram Hospital) from 26.1.2009 to 29.1.2009. Indian Spinal Injury Center charged Rs.15,08,656/- vide bill Ex.PW-6/A (1), Rs.5,57,062/- vide bill Ex.PW-6/A (66) and Rs.2,02,495/- vide bill Ex.PW-6/A (133). City Hospital satisfied itself only in Rs.2,63,345/- vide bill Ex.P-19 to Ex.P-50. Total of these bills make Rs.25,31,554/-. Hence, petitioners are entitled to that amount for medical treatment of the deceased".*

11. There is substance in the submission of the counsel for the insurance company that the addition of the expenses of the bills Ex.PW-6/A (66) (at page 47 of the paper book) in the sum of ₹ 5,57,062 paid to Indian Spinal Injuries Centre, was not correct inasmuch as the said document shows the bill was discounted and no money was paid. It was

conceded at bar by the counsel for the claimants that the discount was on account of some scheme of the employer (Jet Airways), of which the deceased was a beneficiary. There is similar error vis-a-vis the bill Ex.P-6/A (133) (at page 48 of the paper book) for the sum of ₹ 2,02,491/-, the relevant bill proved as Ex.P-18 also shows that it was subjected to a discount for ₹47,054.28. Clearly, these amounts were not spent by the claimants, and, therefore, they cannot claim these sums to be added to the compensation.

12. The insurance company also questions the addition of ₹ 15,08,656.61 against Ex.P-6/A (at page 44 of the paper book) in entirety on the ground that the document shows reference to a company known a E-Meditek Solutions. This Court does not find any merit in the said contention. The bills and receipts were duly submitted by the claimants and merely from the said mention of the name of company itself one cannot infer that the money was paid not by the claimants but by some other entity.

13. The learned counsel for the claimants, however, argued that the bills and receipts submitted by the claimants during inquiry were indicative of expenditure much more than what was computed by the tribunal. Noticeably, the claimants never approached the tribunal with any application for mathematical correction. Therefore, this contention cannot be considered.

14. In above circumstances, the amount of ₹ (5,57,062 + 47,054) ₹ 6,04,116/- will have to be deducted from the expenditure on account of medical treatment sought to be compensated by the tribunal. The final award of compensation needs to be accordingly reduced. Thus, total compensation payable to the claimants work out as (₹ 54,18, 498 – ₹

6,04, 116) ₹ 48,14, 382/-, rounded off to ₹ 48,15,000/-. The award is modified accordingly. The directions as to the levy of interest and apportionment shall continue to be operative in terms of the directions of the tribunal in the impugned judgment.

15. The insurance company has already deposited the amount awarded by the tribunal with upto date interest in terms of the directions in order dated 13.12.2011. Sixty percent (60%) of the awarded amount has already been released, the balance having been kept in fixed deposit in UCO Bank, Delhi High Court Branch, initially for a period of one year, to be renewed after every six months. The Registrar General is directed to work out the balance amount payable to the claimants in terms of the award modified as above and release the same in terms of the above noted directions.

16. The balance shall be refunded to the insurance company with statutory deposit, if made.

17. Lower court record be returned.

R.K. GAUBA
(JUDGE)

FEBRUARY 03, 2016/nk