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

Date of Decision: 28th March, 2016

\+ **MAC.APP. 773/2012 & CM No.12374/2012**

ORIENTAL INSURANCE CO LTD ..... Appellant

Through Mr. Pradeep Gaur, Adv.

versus

RP MEENA & ORS ..... Respondent

Through Mr. S N Parashar, Adv.

\+ **MAC.APP. 946/2014**

R P MEENA & ORS ..... Appellant

Through Mr. S N Parashar, Adv.

versus

M/S 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. Raj Kumar Meena, a bachelor, working as technical support engineer with V Customer Services India Pvt. Ltd., was travelling in Maruti Wagon R car bearing registration No.DL 9C 2232 (the car) when it met with an

accident involving truck bearing No.HR 38 9389 (the offending vehicle) at about 5.30 AM on 04.11.2005 in the area of Kala Patthar Mor, National Highway, Hapur Road resulting in his death. His parents (appellants in MAC.APP.No.946/2014) brought a claim petition (MACT suit No. 242/2010) on 19.01.2006 before the motor accident claims tribunal (tribunal) impleading the driver, owner and insurer (now appellant in MAC.APP.No.773/2012) of the truck as party respondents.

2. In the claim petition it was alleged that the accident had occurred on account of negligence on the part of the truck driver who had parked the truck in the middle of the road with no caution sign indicating its presence resulting in the car coming from behind colliding against it. The tribunal, after inquiry, passed the judgment dated 14.03.2012 affirming the case of the claimants to the effect that the accident had occurred due to negligence on the part of the truck driver. It assessed the compensation in the sum of ₹18,33,500/- calculating it, thus :

(i)	Compensation on account of loss of dependency	: Rs.18,13,500 /-
(ii)	Funeral Expenses	: Rs. 5,000/-
(iii)	On Account of Loss of Love & Affection	: Rs. 10,000-
(iv)	On account of contribution towards loss of Estate	: Rs. 5,000/-
	Total	: Rs.18,33,500/-

3. The insurance company, by its appeal, questions the finding of negligence referring in this context to the evidence of the truck driver Rajindra Singh (R1W1) claiming that he had taken all the necessary

precautions having parked his vehicle on the left proper side of the road with caution lights working, his case being that it was the driver of the car who was negligent, he having come at fast speed in a rash manner and striking against the truck from behind even though there was normal visibility. The insurance company also questions the computation on account of loss of dependency taking exception to the salary proved, *inter alia*, through document (Ex.P4) to have been wrongly taken into account arguing that the performance incentive could not have been treated as constant or regular income. The insurance company also submits that the factoring in of future prospects of increase in income was erroneous.

4. *Per contra*, the claimants by their independent appeal submit that the calculation of loss of dependency by discounting the house rent allowance of ₹2,000/- was improper as that was also part of the regular earnings. They also submit that the awards under the non-pecuniary heads of damages are inadequate. They further seek enhancement of the rate of interst.

5. The learned counsel for the insurance company has taken this Court through the evidence led before the tribunal on the question of negligence which includes the deposition of Sahab Singh (PW4) on the strength of his affidavit (Ex.PW4/A), he being an eye witness and that of R1W1 (the driver of the truck). Whilst it is correct that the truck driver deposed on the lines indicated above, the tribunal found the evidence of PW4 (Sahab Singh) to be more trustworthy. The said witness was a businessman and driving his own motor vehicle at the scene of accident at the relevant point of time. His evidence clearly proved that the truck was stationary in the middle of road without any indication or caution signs and that it was for this reason that

the car coming from behind had suddenly collided against it. The evidence of R1W1 that his truck was stationary on extreme left side of the road while he had gone away to pay toll tax is belied by the site plan which is part of the record of the corresponding criminal case that was also submitted by the claimants during inquiry before the tribunal. The site plan (at page 193 of the tribunal's record) clearly depicts that the truck was stationary in the middle of the road rather than on the extreme left side as claimed. In these circumstances, the findings recorded by the tribunal about negligence on the part of the truck driver do not call for any interference.

6. The evidence led by the claimants clearly shows that the deceased was a qualified engineer. He was in regular employment of V Customer Services India Pvt. Ltd. and in receipt of pay and allowances which were clearly on progressive rise over the period. In these circumstances, the element of future prospects cannot be grudged.

7. There is no merit in the contention that the performance incentive could not have been added. Salary slips submitted on record as part of the evidence shows that the performance incentive was a regular head of income. On the same reasoning, there is no justification that the house rent allowance has to be discounted. After all, this would be a regular inflow which would result in corresponding savings to the deceased. Thus, the loss of dependency worked out by adding together the allowance of ₹4,500/- (as is the amount shown by documents) towards house rent to the calculation. In these circumstances, the gross income is taken as ₹20,000/- PM as shown by the salary slip. Adding the element of future prospects of increase to the extent of 50%, the loss of dependency has to be worked out on the basis of

notional income of ₹30,000/-. This means the annual income would be to the tune of ₹3,60,000/-. On the basis of rates applicable for the corresponding assessment year, the income tax liability would be in the sum of ₹58,000/-. Thus, the annual income on which the loss of dependency has to be worked out is (3,60,000 – 58,000) ₹3,02,000/-. Since the deceased was a bachelor, 50% has to be deducted towards personal & living expenses. Thus, the annual dependency comes to (3,02,000 ÷ 2) ₹1,51,000/-. The tribunal calculated the loss of dependency on the multiplier of 13, and rightly so, since the age of the claimants is found to be average 46 years. Thus, the total loss of dependency comes to (1,51,000 x 13) ₹19,63,000/-.

8. There is merit in the grievance that the non-pecuniary damages are on the lower side and require improvement. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150, compensation in the sum of ₹1 lakh on account of love & affection and ₹25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation payable in the case is computed as (19,63,000 + 1,50,000) ₹21,13,000/-.

9. The compensation is enhanced accordingly.

10. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.], the rate of interest is increased to 9% per annum from the date of filing of the petition till realization.

11. It is noted that during pendency of the appeal, Kalawati Meena (expired) on 01.01.2013. In this view the entire balance shall be paid to her husband R P Meena (father) alone.

12. By order dated 05.09.2012 in MAC.APP.No.773/2012, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with UCO Bank, Delhi High Court branch and out of the same 50% was allowed to released. The Registrar General shall now take necessary steps to ensure that the balance is also released to the claimant in terms of the impugned judgment.

13. The insurance company shall be obliged to deposit further amount in terms of increased award. It shall do so within 30 days of this judgment by depositing the requisite sum with the tribunal which shall deal with it in terms of the above noted directions.

R.K. GAUBA
(JUDGE)

MARCH 28, 2016
VLD