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

Date of Decision: 05.05.2016

+ **MAC.APP. 938/2014 & CM No.17302/2014 and 13988/2016**

ORIENTAL INSURANCE CO.LTD

..... Appellant

Through: Mr. Pradeep Gaur, Advocate

versus

ANIL SHARMA & ORS

..... Respondents

**Through: Mr. R.K. Kohli and Ms. Mamata Pal,
Advocates**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Rohit Vashisth, a bachelor, employed as Telecom Analyst with M/s. Fidelity Business Services India Pvt. Ltd. with gross emoluments in the sum of Rs.3,69,024/- p.a. died as a result of the injuries suffered in a motor vehicular accident that took place on 04.11.2005 involving a motor vehicle (truck) bearing registration no.HR-38-9389 (offending vehicle) which was admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question. His parents, aged 49 years and

47 years respectively, instituted an accident claim case (suit no.465/2011) under Sections 166 and 140 of the Motor Vehicle Act, 1988 (M.V. Act) on 01.09.2007 impleading the insurer as the respondent in addition to the driver and owner of the offending vehicle.

2. The tribunal held inquiry and, by judgment dated 17.07.2014, upheld the case that the death had occurred due to the negligent driving of the offending vehicle, holding all the respondents liable to compensate, the insurance on account of indemnity clause in insurance policy taken out by the owner covering third party risk. The tribunal found the dependency loss at ₹2,76,768/- p.a. and while applying the multiplier of 18 having regard to the age of the deceased (24 years) calculated the loss of dependency at ₹49,81,824/- and added ₹1,35,000/- towards non-pecuniary damages and awarded compensation in the sum of ₹51,16,824/- with interest at the rate of 9% p.a. from the date of filing of the petition till realization.

3. The only ground raised by the appellant by the appeal at hand is that the multiplier of 18 could not have been invoked as the average age of the claimants is 49 years for which 13 would have been the appropriate multiplier. It is well settled that the multiplier is to be chosen according to the age of the deceased or that of the claimants, whichever is higher. [see *G.M. Kerela SRTC vs Susamma Thomas* (1994) 2 SCC 176; *U.P.S.R.T.C. vs Trilok Chandra* (1996) 4 SCC 362]. In above view, the multiplier of 13 requires to be applied. [*Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121].

4. Therefore, the total loss of dependency comes to (₹2,76,768/- x 13) ₹35,97,984/- rounded off to ₹36 Lakhs. Adding the non-pecuniary

damages, the total amount comes to (₹36,00,000/- + 1,35,000/-) ₹37,35,000/-. The award is modified accordingly. Needless to add, it shall carry interest as awarded by the tribunal.

5. By order dated 17.10.2014, it was noted that the awarded amount had already been recovered by the tribunal by attachment. It was directed that 40% shall be released to the claimants subject to the condition of furnishing an affidavit and an undertaking. By order dated 20.04.2015, ₹2,00,000/- each was released in favour of the first and second respondents with liberty further granted to them to receive quarterly interest on the amount held in fixed deposit. The tribunal shall now calculate the amount payable to the claimants under the modified award and release the same from the balance lying in deposit as per respective shares of the claimants.

6. Statutory amount, if deposited, by the appellant shall be refunded.

7. It is pointed out by the counsel for the claimants that the amount attached is lying frozen with SBI, Rohtak Branch. The tribunal shall issue necessary directions to the concerned bank to enforce the award. The excess amount recovered from the insurance company shall be refunded.

8. The appeal and the pending applications are disposed of in the above terms.

R.K. GAUBA
(JUDGE)

MAY 05, 2016
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