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

Date of Decision:18th May, 2016

\+ MAC.APP. 1/2015

ORIENTAL INSURANCE CO LTD ..... Appellant
Through Mr.L.K.Tyagi, Adv.

versus

GYAN DEVI & ORS ..... Respondent
Through Mr.Gurmit Singh Hans and Ms.Aarti Manchanda, Adv. for R-1 to R-5.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Pawan Kumar died in motor vehicular accident which occurred on 17.11.2010 on account of the negligent driving of a Tempo bearing registration No. DL-1LD-6646 (the offending vehicle) admittedly insured against third party risk with the appellant (the insurer) for the period in question. The first to fifth respondents (the claimants), the dependent family members of the deceased, instituted an accident claim case (Suit No. 174/2014) before the Motor Accident Claim Tribunal (the Tribunal) on 15.02.2011, in the wake of a detailed accident report (DAR) submitted by the police on the basis of evidence gathered during the investigation into the corresponding criminal case registered by it. The Tribunal held inquiry and,

by judgment dated 09.10.2014, upheld the case of death having occurred due to negligent driving of the offending vehicle. This finding has attained finality as it was not further challenged. The tribunal assessed the compensation in the sum of Rs.34,75,500/- and awarded it with interest in favour of the claimants calculating the loss of dependency at Rs.32,40,000/-, adding loss of consortium at Rs.1,00,000/-, loss of love and affection at Rs.1,00,000/-, funeral Charges Rs.25,000/- and Rs.10,000/- towards loss to estate. The insurer, which has been burdened with the liability to pay, questions the calculation of loss of dependency on the ground that the Tribunal has proceeded to assess the income on the basis of income tax return (ITR) only of one assessment year 2010-11 (Ex. PW-1/5) and on that basis added the element of future prospects of increase to the extent of 50%, after rounding off the income as indicated by the ITR. This in the submission of the insurer was incorrect. It further questions the levy of penal interest @ 12% per annum in case the awarded compensation was not deposited within the period of 30 days.

2. Having heard arguments on both sides and having gone through the Tribunal records, it is found that the contentions of the insurer about the assessment of income and loss of dependency must be rejected. It is noted that the claimants had proved not only the ITR for the assessment year 2010-11 (Ex.PW-1/5), which only was referred to by the Tribunal in the impugned judgment, but also the ITR for the assessment year 2008-09 (Ex.PW-1/3) and for assessment year 2009-10 (Ex.PW-1/4). A perusal of the said ITRs reveals that the income of Rs.1,13,449/- declared for assessment year 2008-09 had increased to 1,57,935/- in assessment year 2009-10 and further to

Rs.1,74,098/- in the assessment year 2010-11. There is, thus, irrefutable evidence available on record to show progressive rise in income. In these circumstances, the calculation of loss of dependency made by the Tribunal with the element of future prospects cannot be questioned. [see judgment dated 28.03.2016 in MAC.APP. 548/2013 *United India Insurance Co. Ltd. v. Kamla & Ors*.].

3. It is noted that the tribunal awarded Rs.10,000/- only towards loss of estate. The amount is increased to Rs.25,000/- in view of the judgment in *Rajesh & Ors. v. Rajbir Singh & Ors*., (2013) 9 SCC 54 and *Shashikala V. Gangalakshmamma* (2015) 9 SCC 150.

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

5. Since the execution of the award was stayed by order dated 05.01.2015, subject to 50% of the awarded amount with proportionate interest being deposited within the period granted, it is directed that penal interest shall not take effect in the manner directed by the Tribunal in (para 34 of) the impugned judgment. As per the order dated 05.01.2015, one-half of the amount awarded by the Tribunal with proportionate interest has already been deposited and released to the claimants. The insurance company shall now deposit the balance of its liability with the improvement made as above in the award with the Tribunal within 30 days of this judgment failing which the direction about penal interest shall come into

effect. Upon deposit being made, the Tribunal shall proceed to release the balance to the claimants.

6. Statutory deposit, if any, shall be refunded.

7. The appeal is disposed of in the above terms.

R.K. GAUBA
(JUDGE)

MAY 18, 2016
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