$~R-60 & 60A

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

Decided on: 03rd August, 2017

\+ MAC.APP. 91/2009

THE ORIENTAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. A.K. Soni, Advocate

Versus

POONAM AND ORS. ..... Respondents
Through: Mr. O.P. Mannie, Advocate for R-1 to 5

\+ MAC.APP. 673/2017

POONAM & ORS. ..... Appellants
Through: Mr. O.P. Mannie, Advocate

Versus

ORIENTAL INSURANCE CO. LTD. & ANR. ..... Respondents
Through: Mr.A.K. Soni, Advocate for R-1

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

JUDGMENT (ORAL)

1. Mahesh Kumar, then aged 33 years old, working with M/s. Tiger Sports Marketing Pvt. Ltd. as Manager (Finance) at a salary of Rs.25,250/- p.m. (Ex. PW3/1), suffered injuries in a motor vehicular accident that took place on 04.01.2007 in the area of Chirag Delhi Flyover at about 00.40 hours and died in the consequence, the accident involving negligent driving of a vehicle bearing registration no.UP-

2IV-1264 admittedly insured against third party risk with the appellant / Oriental Insurance Co. Ltd. (appellant in MACA 91/2009). On the accident claim case (petition no.112/07) instituted by his wife and four other members of the family dependent on him, they being first to fifth respondents in the said appeal (MACA 91/2009) and appellants in cross appeal (MACA 673/2017), the Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 07.08.2008, accepted the case of death having been caused due to negligent driving of the above mentioned vehicle. The Tribunal awarded compensation in the total sum of Rs.41,50,000/- with interest at the rate of 9% p.a., the said amount inclusive of Rs.50,000/- towards loss of consortium, Rs.1 Lakh towards loss of love and affection and Rs.10,000/- towards funeral expenses, the balance, being on account of loss of dependency, it having been calculated after adding the element of future prospects and, rightly so, on the income of Rs.30,000/- but after deduction of one-third towards personal expenses and applying the multiplier of 17.

2. The insurer is in appeal and challenges the impugned judgment on the ground that the deceased was riding motor cycle bearing registration no.DL-3SR-5386 and was himself negligent in driving. It also questions the computation of compensation pointing out that the multiplier of 16 should have been invoked, this on the basis of ruling in *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr., (2009) 6 SCC 121*.

3. *Per contra*, by cross appeal, the claimants have submitted that the non-pecuniary heads of damages have not been properly taken care of and that deduction should have been made to the extent of one-

fourth. It is also pointed out that in computing the income, the tribunal had taken the salary of Rs.20,000/- ignoring the salary proved by PW-3.

4. The plea of contributory negligence must be rejected in view of the clear evidence on record that the offending vehicle had swerved to the wrong side after jumping the red light so as to come in the way of the motor cycle causing the collision. In these circumstances, the contributory negligence cannot be attributed to the deceased.

5. The salary certificate (Ex.PW3/1) showed the gross emoluments at Rs.25,250/-. This would mean annual salary of Rs.3,03,000/-. Having regard to the rates of income tax applicable for the financial year 2006-2007, the income tax liability would be about Rs.2,000/- p.m. i.e. Rs.24,000/- annually. Thus, the net income would come to Rs.2,79,000/-. Further the element of future prospects of increase to the extent of 50% will have to be factored in. Having regard to the fact that there were 5 claimants, deduction on account of personal and living expenses of the deceased should have been made to the extent of one-fourth. At the same time, the multiplier of 17 was inappropriate. Keeping in view the age of the deceased, the loss of dependency should have been calculated on the multiplier of 16

6. Thus, the total loss of dependency comes to (Rs.2,79,000/- x 150/100 x 3/4x16) Rs.50,22,000/-. Having regard to the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54 and Shashikala V. Gangalakshmamma (2015) 9 SCC 150*, while award of Rs.1 Lakh towards loss of love and affection is appropriate, the other awards being inadequate, compensation in the sum of Rs.1 Lakh

towards loss of consortium and Rs.25,000/- each towards loss to estate and funeral expenses are added.

7. Thus, the total compensation comes to (Rs.50,22,000/- + Rs.1,00,000/- +Rs.1,00,000/- + Rs.25,000/- + Rs.25,000/-) Rs.52,72,000/-. The award is modified accordingly. Needless to add, it shall carry interest as levied by the tribunal.

8. By order dated 09.02.2009 in MACA 91/2009, the insurance company had been directed to deposit the entire awarded amount with the tribunal and out of such deposit, 10% was allowed to be released remaining kept in fixed deposit with a nationalized bank for a period of 7 years, with liberty to draw interest. The balance lying in deposit shall also now be released in terms of the directions in the impugned judgment.

9. The entire enhanced portion of the award with corresponding interest shall fall to the share of the first claimant Poonam (widow), it being released in her favour in the form of a fixed deposit receipt in a nationalized bank for a period of five years with right to draw monthly interest.

10. The statutory amount deposited by the insurance company in its appeal shall be refunded.

11. Both appeals stand disposed of in above terms.

R.K.GAUBA, J.

AUGUST 03, 2017
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