

\$~R-64 & R-65 (*common order*)

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

Decided on: 12th July, 2017

+ MAC.APP. 123/2009 and CM APPL.2665/2009

THE ORIENTAL INSURANCE CO. LTD. Appellant

Through: Mr. Pankaj Seth, Advocate

versus

K.S. YADAV & ORS Respondents

Through: Nemo.

+ MAC.APP. 124/2009

THE ORIENTAL INSURANCE CO. LTD. Appellant

Through: Mr. Pankaj Seth, Advocate

versus

SMT. SUMAN KHANNA & ORS Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. In a motor vehicular accident that occurred on 06.09.1999 involving negligent driving of bus bearing registration No.DL-IP-0185 several persons received injuries, they including K.S. Yadav (the first respondent in MAC APP.123/2009) and Rajesh Khanna, the husband of Suman Khanna, the first respondent in MAC APPL.124/2009

besides others. K.S.Yadav instituted accident claim case (Suit No.532/2007) while Suman Khanna joining her children and mother of the deceased instituted accident claim case (Suit No.305/2007). Both the said claim petitions, along with one another arising out of the same accident, in each of which driver and owner of the offending vehicle were also impleaded as respondents in addition to the insurer, were clubbed together and resulted in common inquiry which eventually resulted in a common judgment dated 03.09.2008.

2. The Motor Accident Claims Tribunal (the tribunal) upheld the contention of accident having occurred due to negligent driving and awarded compensation in each case fastening the liability on the insurance company. In the case of claim for injuries of K.S. Yadav, compensation in the total sum of Rs.4,99,095/- was awarded with interest. In the case arising out of death of Rajesh Khanna, total compensation in the sum of Rs.33,60,400/- was awarded with interest.

3. The insurance company has filed these appeals challenging the awards in favour of K.S. Yadav and the claim in the case of death of Rajesh Khanna submitting that the same are excessive. It may be added that on account of its plea of breach of conditions of the insurance policy, the insurance company has been granted recovery rights against the owner and driver of the offending vehicle.

4. K.S.Yadav, the evidence shows, was employed in income tax department. Proof of his said employment and emoluments earned therefrom was adduced. The tribunal while calculating the compensation on account of loss of leave (and corresponding salary)

for the period of treatment, decided for some reasons, which cannot be fathomed, to go by the minimum wages and in calculating the actual loss, added the factor of future prospects. This is the bone of contention for the insurance company, its submission being that since awards were calculated on minimum wages, it is inherent that there would not have been progressive rise in income. This contention needs to be noted and rejected for the simple reason the evidence clearly showed the claimant was in regular government employment, he being Tax Assistant in Income Tax Department. The appeal in the case of K.S. Yadav is thus devoid of merit.

5. In the appeal in the case of claim on account of death of Rajesh Khanna, exception is taken to multiplier of '15' having been applied and the addition of future prospects to the extent of 50%, it being pointed out that the deceased was 42 years old at the time of death, with reference made to the decision in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121.

6. The contentions of the insurance company technically may be correct. But upon correct calculations being made, there would be no substantial difference in the compensation that deserves to be awarded. This is demonstrated herein below.

7. As per the evidence, the deceased was employed as assistant administrative officer with Oriental Insurance Company (the appellant itself). His salary and emoluments were proved by documents Ex.PW-10/I. Rs.18,261/- may have been the total monthly emoluments. But the document also shows that he was entitled to

certain other perks which, if quantified, would justify the assumption that his income was in the region of Rs.19,000/-. Per *Sarla Verma* (supra), future prospects to the extent of 30% would have to be factored in and the multiplier of 14 would apply. The tribunal fell into error by deducting one-third towards personal and living expenses. Since there were four dependents, such deduction would be to the extent of one-fourth only.

8. Thus, the loss of dependency would work out as $(19,000/- \times 130 \div 100 \times 3 \div 4 \times 12 \times 14)$ Rs.31,12,200/-. The loss of dependency awarded by the tribunal is in the sum of Rs.33,35,400/-. But then the award under non-pecuniary damages at Rs.15,000/- composite for loss to estate and loss of consortium with funeral expenses at Rs.10,000/- are meager. Upon such awards being suitably modified, in accord with the dictum in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, the total compensation awarded by the tribunal is justified.

9. For the foregoing reasons, the appeals are devoid of substance and are dismissed.

10. By order dated 24.02.2009 passed in MAC APP.123/2009 and by order dated 31.03.2009 passed in MAC APP.124/2009, partial stay was granted subject to some amount being released and the balance being deposited with interest with the tribunal. The amounts lying with the tribunal shall now be released to the claimants.

11. The statutory amount shall also be returned to the appellant insurance company.

12. Both appeals with pending application stand disposed of in above terms.

R.K.GAUBA, J.

JULY 12, 2017

vk

