$~R-173 & 173A

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

Decided on: 8th September, 2017

\+ MAC APPEAL No. 89/2010

ORIENTAL INSURANCE. CO. LTD. ..... Appellants
Through: Mr. Pankaj Seth, Adv.

versus

POONAM SHARMA & ORS. ..... Respondent
Through: Mr. Nitinjya Chaudhary, Adv.

\+ MAC APPEAL No. 210/2010

POONAM SHARMA & ORS. ..... Appellants
Through: Mr. Nitinjya Chaudhary, Adv.

versus

ORIENTAL IN. CO. LTD. & ORS. ..... Respondents
Through: Mr. Pankaj Seth, Adv.

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

<u>JUDGMENT (ORAL)</u>

1. Kanti Mohan Sharma, suffered injuries in motor vehicular accident that occurred on 26.12.1997 at about 2:30 PM, statedly due to negligent driving of truck bearing registration no. DL 1L 767, admittedly insured against third party risk with Oriental Insurance Company Ltd. (appellant in MAC Appeal No. 89/2010). His wife and other members of the family dependent upon him (claimants),

they being appellants in MAC Appeal no. 210/2010, instituted accident claim case no. 995198 (old) [791/04 (new)] on 15.07.1998, seeking compensation impleading besides the insurer, the driver and owner of the offending vehicle, on the averments that the accident had occurred due to negligent driving of the said vehicle. The tribunal held inquiry and, on the basis of evidence adduced, accepted the said claim and by judgment dated 16.11.2009, it awarded compensation in the sum of Rs. 4,11,260, with interest @ 7.5% (seven & half per cent) per annum in favour of the claimants, calculating the loss of dependency on the basis of minimum wages of an unskilled worker, then payable at Rs. 1,784/- per month rejecting the plea that the deceased was earning Rs. 25,000/- per month from his business of Freight Forwarding and artificial jewellery.

2. Both the claimants and insurer, feeling aggrieved, have come to this Court with their respective appeals.

3. The claimants arguments is that the evidence to the extent then available had been adduced to support the claim about the earnings of the deceased being in the region pleaded, such evidence inclusive of proof to the effect that his children were students in educational institutions of repute, they paying Rs. 36,000/- per annum as tuition fee, the calculation is based on mechanical adoption of minimum wages as the benchmark. The claimants are also aggrieved with the awards under the non-pecuniary heads of damages.

4. On the other hand, the insurer questions the finding returned by the tribunal on the question of involvement of the insured vehicle and the negligence on the part of its driver, its submission being that the

conclusions are unfounded. On the computation of loss of dependency, the insurer is aggrieved with the addition of element of future prospects of income in a case where the tribunal felt constrained to assess the income notionally with the help of minimum wages. It also pleads that there was breach of terms and conditions of the insurance policy since the driving licence relied upon by the driver and owner of the vehicle, upon verification, had been found to be fake.

5. The contention of the insurance company about the trial Court not having properly dealt with the evidence about the involvement of the truck or negligence on the part of its driver may be correct, but then it does not mean that there was no evidence which supports the case of the claimants to such effect. The evidence recorded during the inquiry includes the testimony of Ajay Shukla (PW-1), a scooterist, who deposed on oath that he was also present at the scene moving on his vehicle on his way. He described the sequence of events wherein the truck had hit the scooter of the deceased from behind. The police investigation of the corresponding criminal case registered as FIR No. 835/1997 in police station Hazarat Nizamuddin, resulted in report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C) (Ex.PW-1/11) wherein PW-1 was not cited as a witness. But, this by itself cannot mean that evidence of PW-1 is to be thrown out as unbelievable. The police may not have relied on the evidence of PW-1 possibly for the reason that it had some other witness available to it, he also being a chance witness, who had narrated the sequence of events. In these facts and circumstances and the fact that the sixth respondent Raj Bahadur (driver of the offending vehicle) was not

called upon by any of the contesting parties to depose about his version, the plea of the insurance company against the finding on the issue of involvement of negligence is rejected.

6. The issues that persist, however, relate to the determination of the compensation that is to be awarded and the plea of the insurance company for recovery rights.

7. During the course of hearing, the learned counsel for the claimants submitted, that in order that the claimants are not deprived of just compensation, they may be given opportunity to lead additional evidence to bring on record proper proof, if not of the actual earnings of the deceased, at least of the expenditure that he would be incurring on himself and his family, so that more accurate assessment of his actual earnings may be made. The counsel for the insurer, on being asked to respond, submitted that he leaves the matter to the discretion of the Court. At the same time, he submitted that if the matter were to be remitted for the afore-mentioned purposes to the Tribunal, the issue of recovery rights may also be relegated to the Tribunal for fresh determination.

8. Having regard to the above-noted submissions, the limited issues relating to the determination of the just compensation and the plea for recovery rights raised on behalf of the insurer are remitted to the Tribunal for further inquiry and fresh adjudication. In the said further inquiry, the claimants will be entitled to adduce additional evidence. Needless to add, the parties which contest will also be given similar opportunity to lead evidence in rebuttal, if any.

9. The parties shall assemble before the Tribunal for such further proceedings on 9th October, 2017. Given the fact that the case relates to accident of 1997, it must be added that the Tribunal will be obliged to hold expeditious proceedings for which the parties and their counsel are directed to render full cooperation. The fresh decision on the limited issues will have to be taken by the Tribunal at an early date preferably not later than six months from the date of first appearance hereby fixed. The issue of recovery rights will also be determined afresh on the light of evidence already led, or as may be adduced hereinafter additionally. But, for such purpose, the Tribunal will have to secure the presence of owner and driver by requisite notices to them.

10. By order dated 15.02.2010 on MAC Appeal No. 89/2010, the insurance company had been directed to deposit the entire awarded amount with interest with UCO Bank, Delhi High Court Branch, some portion whereof has already been released to the claimants in terms of the subsequent orders. The balance lying in deposit with accrued interest shall presently be refunded to the insurance company. The amount already received by the claimants will be liable to be adjusted against the award that is expected to be passed afresh. The registry, shall intimate, to the tribunal, the amount already paid to the claimants so that it can pass necessary directions at the time of fresh adjudication.

11. The statutory amount of the insurance company shall be presently refunded.

12. Both appeals stand disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 08, 2017
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