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

% **<u>Date of Decision:24th July, 2017</u>**

\+ MAC.APP.58/2015 & CM 879/2015

ORIENTAL INSURANCE COMPANY LTD. ..... Appellant
Through: Mr.Pankaj Seth, Advocate

versus

MOHAN DEVI & ORS. ..... Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

<u>JUDGMENT (ORAL)</u>

1. The appellant has challenged the impugned award whereby compensation of Rs.6,96,889/- has been awarded to respondents no.1 to 6.

2. The accident dated 25th June, 2008 resulted in the death of Nathi Lal. The deceased was aged 51 years at the time of the accident and was survived by his widow, four sons and a daughter who filed the application for compensation before the Claims Tribunal. According to the claimants, the deceased was earning Rs.5,000/- per month. However, the Claims Tribunal took minimum wages of Rs.4,057/- per month, added 15% towards future prospects, deducted 1/4th towards personal expenses and applied multiplier of 11 to compute the loss of financial dependency as Rs.4,61,889/-. The Claims Tribunal added Rs.1 lakh towards loss of love and affection, Rs.1 lakh towards consortium, Rs.10,000/- towards loss of estate and Rs.25,000/-

towards funeral expenses. The total compensation awarded is Rs.6,96,889/- along with interest @ 9% per annum.

3. Learned counsel for the appellant urged at the time of the hearing of the appeal that future prospects of 15% should not have been taken into consideration.

4. This Court is of the view that it is not mandatory to resort to minimum wages in each and every case. Reference in this regard may be made to the judgment of the Supreme Court in ***Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy,*** AIR 2012 SC 100 in which 59 persons died in *Uphaar tragedy* and the Supreme Court granted compensation of Rs.10,00,000/- to the victims of above 20 years of age and Rs.7,50,000/- to the victims below 20 years of age on the basis of multiplier method. The Supreme Court applied the multiplier of 15 and deducted 1/3rd towards the personal expenses. The income of the victims aged more than 20 years was assumed to be Rs.8,333/- per month and that of victims aged less than 20 years was assumed to be Rs.6,249/- per month. The computation of the compensation awarded by the Supreme Court would be as under :-

For victims aged more than 20 years:-

(Rs.8,333/- less 1/3rd)x 12 x 15 = Rs.10 lakhs.

For victims aged less than 20 years:-

(Rs.6249/- less 1/3rd) x 15 = Rs.7.5 lakhs.

5. It is relevant to note that the *Uphaar tragedy* took place on 13th June, 1997 and the minimum wages at the relevant time were less than Rs.2600/- but neither the Division Bench of this Court nor Supreme Court resorted to minimum wages to compute the compensation although neither the income nor the occupation of the victims was proved.

6. In the present case, the occupation of the deceased had been proved as a driver. PW-1 deposed before the Court that the deceased was earning Rs.5,000/-. Applying the principles laid down in *Uphaar tragedy*, the income of the deceased should have been taken as Rs.5,000/- per month whereas the Claims Tribunal has taken the income as Rs. 4665.55 per month (Rs.4057/- + 15%) which is less than Rs.5,000/- per month. The amount awarded by the Claims Tribunal is just, fair and reasonable and does not warrant any interference.

7. There is no merit in this appeal which is hereby dismissed. The pending application is disposed of.

8. There is no appearance on behalf of the respondents despite service and the compensation amount has already been recovered by them through execution. The statutory amount be refunded back to the appellant.

9. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court Master.

JULY 24, 2017 **J.R. MIDHA, J.**

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