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

Decided on: 04rd August, 2017

\+ MAC.APP. 163/2016 and CM APPL. 6121/2016 (stay)

ORIENTAL INSURANCE COMPANY LTD. ….. Appellant
Through: Mr.R.K. Tripathi, Adv.

Versus

RASIDAN & ORS. ..... Respondents
Through: Mr. S.N. Parashar, Adv. with Ms. Pankaj Kumari, Adv. for R-1 & R-2.

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

JUDGMENT (ORAL)

1. Javed, a bachelor, son of the first respondent died in a motor vehicular accident that occurred on 11.07.2008 due to negligent diving of the motor vehicle described as truck bearing registration No.HR-45A-0497, which was admittedly insured against third party risk for the period in question with the appellant insurance company.

2. On her claim petition (MACT No.920/08), instituted on 16.10.2008, the Motor Accident Claims Tribunal (the tribunal), by judgment dated 22.12.2015, awarded compensation in the sum of Rs.6,65,856/- directing the insurer to pay with interest @ 9% per annum, though on account of breach of terms and conditions of the insurance policy it was granted recovery rights against the driver and owner (second and third respondents respectively).

3. By the appeal at hand, the insurer points out error in the computation of the loss of dependency on the basis of multiplier of 18 adopted according to the age of the deceased.

4. Having regard to the ruling of the Supreme Court in *General Manager, Kerala State Road Transport Corporation vs. Susamma Thomas & Ors.,* (1994) 2 SCC 176, *U.P.S.R.T.C. vs Trilok Chandra* (1996) 4 SCC 362, this court in *National Insurance Company Limited vs. Mohammed Siddique & Ors.,* MAC APP.431/2016, decided on 18th July, 2017, held as under:

> *"16. Since the decision in Trilok Chandra and Ors., (supra) by a bench of three Hon'ble Judges is prior in time in relation to the decisions in Reshma Kumari (supra) and Munna Lal Jain (supra), it is the statement of law on choice of multiplier in the former which is to be taken as the binding precedent. Thus, this court will follow the dictum in the said judgment and adopt the multiplier according to the age of the deceased or that of the claimants, whichever is higher."*

5. It is the age of the deceased or the claimants, whichever is higher, which is to regulate the choice of the multiplier in such cases.

6. In the present case, the ration card (Ex.PW-1/2) issued in March, 2008 showed the age of the claimant mother as 40 years. Since the accident had occurred in the same year, her age at the relevant time being 40 years, the calculation of loss of dependency had to be made on the multiplier of 15.

7. On the amount of Rs.2040/-, calculated as the net wages, after deduction of personal and living expenses, the loss of dependency is

re-computed as (2040/- x 12 x 15) Rs.3,67,200/- rounded off to Rs.3,68,000/-. Adding the non-pecuniary damages, as awarded by the tribunal in the total sum of Rs.2,25,000/-, the compensation comes to (3,68,000/- + 2,25,000/-) Rs.5,93,000/-. The award is modified accordingly. It shall carry interest at levied by the tribunal.

8. It is made clear that the modification ordered by this court in the award will not affect the recovery rights.

9. By order dated 22.02.2016, the insurance company had been directed to deposit the awarded amount with upto date interest with the tribunal within thirty days and out of the said deposited amount, fifty percent (50%) was allowed to be released in terms of the impugned award. Since the compensation has been reduced, it is directed that the tribunal shall re-calculate the amount in terms of modified award, refunding the excess to the appellant insurance company.

10. The statutory amount shall also be refunded to the insurance company.

11. The appeal along with pending application stands disposed of in above terms.

12. *Dasti.*

R.K.GAUBA, J.

AUGUST 04, 2017
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