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

% **Date of Decision: 24th August, 2017**

\+ FAO 122/2017 & CM No.9637/2017

138 THE ORIENTAL INSURANCE CO LTD ..... Appellant
Through: Mr. Rajan Mishra, Adv.

versus

JYOTI & ORS ..... Respondents
Through: Ms. Richa Dhawan and Mr. Man Mohan, Advs. for R1 to R4.
Mr. Sanjeev Sabharwal, Adv. for SDMC with Mr. D.S. Hooda A.E.(Projects), SDMC, West Zone.

\+ FAO 123/2017 & CM No.9643/2017

139 THE ORIENTAL INSURANCE CO LTD ..... Appellant
Through: Mr. Rajan Mishra, Adv.

versus

TARA DEVI & ORS ..... Respondents
Through: Ms. Richa Dhawan and Mr. Man Mohan, Advs. for R1 to R8.
Mr. Sanjeev Sabharwal, Adv. for SDMC with Mr. D.S. Hooda A.E.(Projects), SDMC, West Zone.

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

JUDGMENT (ORAL)

1. The appellant has challenged the orders dated 05th December, 2016

whereby the Commissioner, Employees' Compensation has awarded compensation of Rs.8,52,160/- to the legal representatives of late Rambabu and Rs.7,93,240/- to the legal representatives of late Chintu.

2. On 13th December, 2014 at about 3:13 P.M., Rambabu and Chintu were working as *mistri* along with 10-12 labourers on the construction site of a wall of a "*Nala*" at Kaganheri Village Bus Stand, on the road going towards Chhawla Village when a mixer truck bearing No. HR 63B 9453 came to the construction site carrying cement and *rodhi*. The labour working on the site strictly advised to the builder and the truck driver not to bring mixer truck on the site as the construction material was fresh and had not settled and the wall made to '*baalu retha*' would not be able to take the weight of mixer truck. However, the driver of the mixer truck did not pay any heed to the safety measures and rashly and negligently drove the mixer truck on the construction site whereupon the mixer truck over-turned and Rambabu as well as Chintu came under the truck and suffered fatal injuries.

3. Rambabu was survived by his widow, parents and a minor son whereas Chintu was survived by his widow, parents and five minor children who filed separate claim applications for compensation before the Commissioner, Employees' Compensation.

4. The appellant contested the claim on the ground that the offending vehicle bearing No. HR 63B 9453 covered the risk of accidental death/injury of the driver and cleaner working on the insured vehicle whereas the Contractor Plant and Machinery Floater Policy, No.311800/44/2015/410 does not cover the injury to the employees/workmen.

5. The Commissioner, Employees' Compensation held that Contractor Plant and Machinery Floater Policy covered the third party claim under the

policy. The Commissioner, Employee's Compensation held the appellant liable to pay the compensation as the third party claim was covered under the Contractor Plant and Machinery Floater Policy.

6. Learned counsel for the appellant urged at the time of hearing that the appellant is not liable under both the policies. It is submitted that the workmen were not employed with the owner of the mixer truck and, therefore, the compensation cannot be awarded under the Employee's Compensation Act. It is submitted that the legal representatives of the two deceased persons can maintain their third party claim before the Motor Accident Claims Tribunal.

7. The record of the Commissioner, Employee's Compensation has been perused. The appellant has issued following two insurance policies in the present case:-

(i) Contractor Plant and Machinery Floater Policy bearing No.311800/44/2015/410 in respect of the plant and machinery (Ex.RW6/B). The scope of the insurance policy covers the loss due to overturning.

(ii) Insurance policy bearing No. 311800/31/2015/3756 in respect of mixer truck bearing No. HR 63B 9453 (Ex.RW6/A). This policy also covers the loss to the third party.

8. In the present case, Rambabu and Chintu suffered accident during the course of their employment and their claim is covered under the Contractor Plant and Machinery Floater Policy. Under Section 167 of the Motor Vehicles Act, the claimants had the option to claim compensation under the Employees' Compensation Act or Motor Vehicles Act. In fact, the claimants would have received higher compensation by the multiplier method under

Section 166 of the Motor Vehicles Act. However, the claimants opted to claim lesser compensation under the Employees' Compensation Act.

9. The impugned order awarding the compensation to the claimants does not warrant any interference considering that there is a valid insurance policy and the liability of the appellant is absolute.

10. Both the appeals are dismissed. Pending applications are disposed of.

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11. The appellant has deposited Rs.10,80,267/- with the Registrar General of this Court out of which Rs.2,00,000/- have been released in terms of the order dated 24th May, 2017 and the balance amount is lying with the Registrar General of this Court. Respondent No.5 has deposited Rs.4,23,850/- with the Registrar General of this Court in terms of the order dated 17th April, 2017.

12. The Registrar General is directed to release the said amount by transferring the same to UCO Bank, Delhi High Court Branch with instructions to disburse the amount in the following manner:-

(i) Rs.4,50,000/- be kept in 100 FDRs of Rs.4,500/- each in the name of Jyoti (respondent no.1) for the period 1 month to 100 months with cumulative interest.

(ii) Rs.2,25,000/- be kept in 100 FDRs of Rs.2,250/- each in the name of Kallu (respondent no.2) for the period 1 month to 100 months respectively with cumulative interest.

(iii) Rs.2,25,000/- be kept in 100 FDRs of Rs.2,250/- each in the name of Bhoora @ Bhoori (respondent no.3) for the period 1 month to 100 months respectively with cumulative interest.

(iv) Rs.3,00,000/- be kept in FDR in the name of Master Akash (respondent no.4) till he attains majority with cumulative interest. Upon majority, UCO Bank, Delhi High Court Branch shall release 10% of the FDR amount to Akash and keep the balance amount in monthly FDRs in the denomination of Rs.5,000/- each. The odd amount less than Rs.5,000/- be released to Akash by transferring the same his individual savings bank account near the place of his residence.

13. The balance amount, after keeping Rs.12 lakh in FDRs, be released to respondents no.1, 2 and 3, in equal shares, by transferring the same to their savings bank account with UCO Bank, Delhi High Court Branch as per particulars given herein below:

(i) Respondent no.1 (Jyoti) A/c No.15530110123447

(ii) Respondent no.2 (Kallu) A/c No.15530110123331

(iii) Respondent no.3 (Bhoora @ Bhoori) A/c No.15530110123454

14. The maturity amount of the FDRs be transferred to the savings bank account of the beneficiaries near the place of their residence. Respondents no.1 to 3 submit that they will transfer their individual savings bank accounts from UCO Bank, Delhi High Court Branch to UCO Bank, B-85, Avas Vikas Colony, Civil Lines District Banda, Uttar Pradesh, (IFSC Code: UCBA0002577) near the place of their residence within four weeks. The respondents shall furnish the particulars of their individual savings bank accounts near the place of their residence to UCO Bank, Delhi High Court Branch within four weeks. In the event of the failure of the respondents to open individual savings bank accounts near the place of their residence, UCO Bank, Delhi High Court Branch shall withhold release of the maturity amount of the FDRs till they open/transfer their individual savings bank accounts near the place of their residence.

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15. The appellant has deposited Rs.10,05,482/- with the Registrar General of this Court. Respondent No.5 has deposited penalty amount of Rs.4,23,850/- with the Registrar General of this Court. As such, a total sum of Rs.14,29,332/-(Rs.10,05,482 + Rs.4,23,332) is lying with the Registrar General of this Court.

16. The Registrar General is directed to release the said amount by transferring the same to UCO Bank, Delhi High Court Branch with instructions to disburse the amount in the following manner:-

(i) Rs.4,00,000/- be kept in 100 FDRs of Rs.4,000/- each for the period 1 month to 100 months respectively in the name of Tara Devi (respondent No.1) with cumulative interest.

(ii) Rs.2,00,000/- be kept in 100 FDRs of Rs.2,000/- each for the period 1 month to 100 months respectively in the name of Bhagirath @ Bhageerath (respondent No.2) with cumulative interest.

(iii) Rs.2,00,000/- be kept in 100 FDRs of Rs.2,000/- each for the period 1 month to 100 months respectively in the name of Mannu (respondent No.3) with cumulative interest.

(iv) Rs.1,00,000/- be kept in the name of Master Amar Singh (respondent No.4) till he attains the age of majority. Upon attaining majority, the interest amount be released to Amar Singh and the principal amount of Rs.1,00,000/- be kept in 20 FDRs of Rs.5,000/- each for the period 1 month to 20 months respectively in the name of Amar Singh along with cumulative interest.

(v) Rs.1,00,000/- be kept in the name of Master Ravi (respondent No.5) till he attains the age of majority. Upon attaining majority the interest amount be released to Ravi and the principal amount of Rs.1,00,000/- be kept in 20 FDRs of Rs.5,000/- each for the period 1 month to 20 months respectively in the name of Ravi along with cumulative interest.

(vi) Rs.1,00,000/- be kept in the name of Chanda (respondent No.6) till she attains the age of majority. Upon attaining majority the interest amount be released to Chanda and the principal amount of Rs.1,00,000/- be kept in 20 FDRs of Rs.5,000/- each for the period 1 month to 20 months respectively in the name of Chanda along with cumulative interest.

(vii) Rs.1,00,000/- be kept in the name of Kranti (respondent No.7) till she attains the age of majority. Upon attaining majority the interest amount be released to Kranti and the principal amount of Rs.1,00,000/- be kept in 20 FDRs of Rs.5,000/- each for the period 1 month to 20 months respectively in the name of Kranti along with cumulative interest.

(viii) Rs.1,00,000/- be kept in the name of Jayanti (respondent No.8) till she attains the age of majority. Upon attaining majority the interest amount be released to Jayanti and the principal amount of Rs.1,00,000/- be kept in 20 FDRs of Rs.5,000/- each for the period 1 month to 20 months respectively in the name of Jayanti along with cumulative interest.

17. The balance amount, after keeping Rs.13,00,000/- in FDRs, be released to respondents No.1 to 3, in equal shares, by transferring the same to their savings bank accounts. However, the maturity amount of the FDRs shall be transferred to the individual savings bank account of the respondents

near the place of their residence.

18. Respondents No.1 and 2 are present in Court and they have produced the passbooks of their savings bank account along with the passbook of savings bank account Respondent no.3, with UCO Bank, Delhi High Court Branch. The particulars of the same are as under:-

(i) Respondent no.1 (Tara Devi) A/c No.15530110123355

(ii) Respondent no.2 (Bhagirath @ Bhageerath) A/c No.15530110123348

(iii) Respondent no.3 (Mannu@Mannoo Bai) A/c No.15530110123362

19. The maturity amount of the FDRs be transferred to the individual savings bank accounts of the beneficiaries near the place of their residence. Respondents no.1 to 3 submit that they will transfer their savings bank accounts from UCO Bank, Delhi High Court Branch to UCO Bank, Mahoba Branch, District Mahoba, Uttar Pradesh, (IFSC Code: UCBA0002516), near the place of their residence within four weeks. The respondents shall furnish the particulars of their individual savings bank accounts near the place of their residence to UCO Bank, Delhi High Court Branch within four weeks. In the event of the failure of the respondents to open individual savings bank accounts near the place of their residence, UCO Bank, Delhi High Court Branch shall withhold release of the maturity amount of the FDRs till they open/transfer their individual savings bank accounts near the place of their residence.

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20. All the original FDRs shall be retained by UCO Bank, Delhi High Court Branch. However, the statement containing FDR number, FDR amount, date of maturity and the maturity amount be furnished to respondents/beneficiaries.

21. No loan or advance or pre-mature discharge shall be permitted without the permission of this Court.

22. No cheque book or debit card be issued to respondents/beneficiaries without permission of this Court. However, in case, the debit card/cheque book have already been issued, the concerned Bank shall cancel the debit card and/or cheque book.

23. List for compliance on 20th September, 2017.

24. Copy of this judgment be sent to UCO Bank, Delhi High Court Branch for compliance.

25. Copy of this judgment be given *dasti* to learned counsels for the parties under signature of Court Master.

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

ak/dk