

\$~13 & 14 (*common order*)

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

Decided on: 8th August, 2017

+ MAC.APP. 220/2009 and CM APPL.6399/2009

ORIENTAL INSURANCE CO LTD. Appellant
Through: Mr. S.K. Tyagi, Advocate

versus

KRISHNA PREM & ORS. Respondent
Through: Mr. Sumit Gupta, Advocate for
R-1 to R-4.

+ MAC.APP. 28/2017

KRISHNA PREM & ORS Appellants
Through: Mr. Sumit Gupta, Advocate

versus

SHANKAR SINGH & ORS (THE ORIENTAL INSURANCE
CO LTD) Respondent
Through: Mr. S.K. Tyagi, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Prem Kumar ER, born on 15.05.1965 and employed as Constable with Delhi Police, was travelling on two-wheeler scooter bearing registration No. HR-23A-2240 (the scooter) on the night intervening 5-6.12.2006, with his brother-in-law L.R. Vinod (PW-1). The scooter met with an accident in the area of over bridge, Brij Vihar

Link Road, Ghaziabad, U.P., on account of collision with Tata 407 No.DL-ILE-3601 (the offending vehicle), it admittedly insured against third party risk with Oriental Insurance Company Limited, the appellant in MAC APP.220/2009 (the insurer). As a result of the collision, Prem Kumar died. His widow and other members of the family dependent on him (collectively, the claimants), they being appellants in MAC APP. 28/2017, instituted accident claim case (Suit No.343/2007) which was decided, after inquiry, by the tribunal, by its judgment dated 27.01.2009. The claimants' case that the accident had occurred due to negligence on the part of the driver of the offending vehicle was accepted and compensation in the sum of Rs.15,55,600/- was awarded with interest @7% per annum, from the date of filing of the petition till realization, the liability having been fastened on the insurer.

2. The insurer, by its appeal, challenges the judgment of the tribunal submitting that since the accident had occurred on account of head-on collision between the two vehicles, the element of contributory negligence should have been factored in. It is also the submission of the insurer that the tribunal fell into error by adding the element of future prospects of increase to the extent of 50% and applying the multiplier of 15 which was incorrect in view of the ruling in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121.

3. *Per contra*, the claimants have prayed for enhanced compensation on the ground that the tribunal had concluded (in para

15) that deduction on the account of personal and living expenses had to be to the extent of one-fourth ($1/4^{\text{th}}$) but then erroneously applied one-third in the calculation. It is further the grievance pressed by the claimants that the non-pecuniary damages awarded and the rate of interest levied are inadequate.

4. The contention of the insurer about contributory negligence must be rejected for the simple reason the accident may have been described by PW-2 as head-on collision, but it cannot be ignored that he also stated in the course of deposition that the offending vehicle had come from the wrong side which was the prime cause for the collision. Noticeably, the driver of the offending vehicle while appearing in the witness box as R1W1 denied even the collision which obviously could not have been accepted in view of the other corroborating material on record. In these circumstances, the plea of the insurer for deduction on account of contributory negligence is rejected.

5. The calculation by the tribunal of loss of dependency is indeed erroneous in that the element of future prospects of increase could not have been to the tune of fifty per cent (50%) and multiplier of 15 could not have been invoked. The deceased was more than 41 years old at the relevant point of time and, therefore, future prospects to the extent of thirty per cent (30%) and the multiplier of 14 should have been applied. The last salary drawn was in the sum of Rs.8495/- and, therefore, the loss of dependency is re-computed, after deduction of one-fourth towards personal and living expenses, which only would

have been proper, as $(8495/- \times 130/100 \times 3/4 \times 12 \times 14)$ Rs.13,91,481/- rounded off to Rs.13,92,000/-.

6. Having regard to the date of accident (6/12/2006), the composite award of Rs.12,500/- toward loss of estate and loss of love and affection, Rs.10,000/- towards loss of consortium and Rs.4,000/- towards funeral expenses was highly deficient. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, compensation in the sum of Rs.1 lakh each on account of loss of love & affection and loss of consortium and Rs.25,000/- each towards loss of estate and funeral expenses are added.

7. Thus, the total compensation payable in the case is computed as $(13,92,000/- + 2,50,000)$ Rs.16,42,000/-. The award is modified accordingly.

8. Following the consistent view taken by this Court, the rate of interest is increased to nine per cent (9%) per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*].

9. Having regard to the dispensation made by the tribunal in faovur of the other claimants, it is directed that the entire enhanced portion of the award with corresponding interest shall go to the share of the first claimant Krishna Prem (widow), it to be released to her in the form of interest bearing fixed deposit receipt, to be taken out in a

nationalized bank for a period of ten years with right to draw monthly interest.

10. The insurance company shall deposit the enhanced portion with interest with the tribunal within thirty days, making it available to be released to the claimants.

11. The statutory amount shall be refunded to the insurance company.

12. Both the appeals stand disposed of in above terms.

13. *Dasti.*

AUGUST 08, 2017

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R.K.GAUBA, J.