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

Decided on: 7th September, 2017

\+ MAC APPEAL No. 196/2016

THE ORIENTAL INS. CO. LTD. .... Appellant
Through: Mr. A.K. Soni, Adv.

versus

NEELAM & ORS. ..... Respondents
Through: Mr. Kunwar Pal Singh, Adv. for R-1 to 5.

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

JUDGMENT (ORAL)

1. Virender Singh, employed as a driver with Uttar Pradesh State Road Transport Corporation (UPSRTC), suffered death in motor vehicular accident that occurred on 29.06.2011 due to negligent driving of truck bearing registration no. UP 81Y 9653, admittedly insured against third party risk with the appellant insurance company. His wife and other members of the family, dependent upon him, they being first to fifth respondents (collectively, the claimants) instituted accident claim case (MACT no. 303/2012) on 25.08.2012 seeking compensation. The tribunal upheld the case for compensation on fault liability and awarded Rs. 27,10,000/- (Rupees Twenty Seven Lakhs Ten Thousand), directing the appellant to pay with interest @ nine per cent (9%) per annum, the said amount inclusive of Rs. 3,00,000/- towards loss of love & affection (children + parents), Rs. 1,00,000/-

each towards loss of consortium and loss to estate and Rs. 50,000/- towards funeral expenses, the balance being due to loss of dependency.

2. The insurer by the appeal at hand questions the inclusion of element of future prospects over and above the income assessed by drawing an average and also submits grievance about the non-pecuniary heads of damages arguing that the same are excessive.

3. It is noted that the claimants had led evidence by examining Vijay Pal (PW-4) that the deceased was employed with UPSRTC under kilometer scheme on contract basis, the terms and conditions indicative of his wages being connected to the performance. The salary record (Ex.PW-4/8 and 4/9) revealed that his wages would vary from month to month depending on the performance. It is against this backdrop that the tribunal drew an average and assessed the income at Rs. 10,000/- per month. Though the engagement may be on contract basis, it cannot be ignored that the employment was more or less regular in the sense it was to continue with UPSRTC on wages, it having been determined, the progressive rise in income being inherent in such contract. In these circumstances, the argument of the insurance company against the inclusion of future prospects is repelled.

4. Having regard to the dispensation by this Court in cases relating to the accidents of same vintage, award under the non-pecuniary heads of damages seems to be inappropriate, excessive under some heads and deficient in others. To bring about consistency, it is directed that the claimants will be entitled to Rs. 1,50,000/- each under the heads of

loss of love & affection and loss of consortium and Rs. 50,000/- each under the heads of loss to estate and funeral expenses. This would mean the award is to be reduced by Rs. 1,50,000/-. Thus, the award is modified as (27,10,000- 1,50,000) Rs. 25,60,000/-(Rupees twenty five lakhs sixty thousand only). Needless to add, it shall carry interest as levied by the tribunal.

5. By order dated 29.02.2016, the insurance company had been directed to deposit the entire awarded amount with upto date interest with the tribunal within the period specified and out of such deposit fifty per cent (50%) was allowed to be released to the claimants. The balance in terms of the modification ordered above, shall now be released to the claimants, refunding the excess with corresponding interest to the insurance company.

6. The statutory deposit shall be refunded.

7. Dasti.

R.K.GAUBA, J.

SEPTEMBER 07, 2017
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