$~R-354

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

***Decided on: 24th October, 2017***

\+ MAC APPEAL 533/2011 and CM 19950/2015

JYOTI & ORS. ..... Appellants

Through: None

versus

ORIENTAL INDIA INSURANCE CO. LTD. & ORS. ..... Respondents

Through: Mr. Sreenath S., Adv. for R-1

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

**JUDGMENT (ORAL)**

1. Ram Baran @ Ram Sharan, found by the Motor Accident Claims Tribunal (Tribunal) to be aged 51 years on the relevant date, died due to the injuries suffered in a motor vehicular accident that took place on 19.05.2008 due to the negligent driving of a chartered bus bearing registration no.DL-1PA-1929, admittedly insured against third party risk with the first respondent (insurer) for the period in question.

2. The appellants being members of the family dependent upon the deceased Ram Baran @ Ram Sharan (collectively, the claimants) instituted accident claim case (suit no.393/2010/2008) on 02.06.2008 seeking compensation impleading the said insurer besides the driver and owner of the bus, they being the second and third respondents respectively in the appeal.

3. After inquiry, by judgment dated 24.11.2010, the Motor Accident Claims Tribunal (Tribunal) accepted the case for compensation holding the bus driver responsible for the accident. It awarded compensation in the total sum of Rs.4,55,380/- inclusive of Rs.3,80,380/- towards loss of dependency, Rs.25,000/- towards funeral expenses and Rs.50,000/- towards loss of consortium.

4. The driver and owner of the bus had suffered the proceedings ex-parte. The insurer had taken the plea that the driver was not holding a valid or effective driving licence at the relevant time. This plea was accepted and the insurer who was called upon to pay the compensation was granted right to recover the same from the said driver and owner of the bus.

5. The appeal at hand was filed seeking enhancement of the compensation on the ground that the loss of dependency had not been properly worked out as the choice of multiplier of 10 was incorrect and that the income of Rs.7,500/- p.m. from M/s. A.R.C. Detectives Pvt. Ltd. was improperly ignored. Alongwith the appeal, the claimants also filed an application (CM 19950/2015) seeking to place on record a salary certificate purportedly issued by M/s. A.R.C. Detectives Pvt. Ltd. indicating the emoluments of the deceased to be Rs.5,000/- p.m.

6. The appeal was admitted and directed to be taken up on its own turn as per order dated 17.02.2016. When it is taken up for hearing, there is no appearance on behalf of the appellant. The matter has been considered with the assistance of the counsel for the insurer and upon perusal of the tribunal's record.

7. The salary certificate purportedly issued by M/s. A.R.C. Detectives Pvt. Ltd., as submitted with the application (CM 19950/2015), cannot be given any credence in view of what was submitted before the tribunal. The claimants had sought an opportunity to examine the employer but then gave up the said effort. They conceded through counsel before the tribunal that the income be assessed on the basis of minimum wages. The document now filed even otherwise, appears to be a procured one in that it does not go well with the pleadings to the effect that the deceased was earning Rs.7,500/- p.m. from such entity.

8. In these circumstances, the only error found committed by the tribunal is in the choice of multiplier (10) which actually should have been higher (11), keeping in view the age (51 years) of the deceased at the relevant point of time. Since the loss of annual dependency was worked out at Rs.38,038/-, the said amount would need to be added to the compensation to make up the deficiency under the head of loss of dependency.

9. Having regard to the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors., (2013) 9 SCC 54* and *Shashikala V. Gangalakshmamma (2015) 9 SCC 150*, award under the head of loss of consortium (Rs.50,000/-) is found to be inadequate and there is further deficiency in that there is no award under the head of loss of love and affection. Adding Rs.1,00,000/- each under the said counts and further including Rs.25,000/- towards funeral expenses, the compensation needs to be increased by [Rs.38,038/- + Rs.50,000/- + Rs.1,00,000/-]

Rs.1,88,038/- (Rupees One Lakh eighty eight thousand and thirty eight only).

10. The award is thus increased to [Rs.4,55,380/- + Rs.1,88,038/-] Rs.6,43,418/-, rounded off to Rs.6,44,000/- (Rupees Six Lakh and forty four thousand only). Needless to add, it shall carry interest as levied by the tribunal. This judgment does not disturb the recovery rights granted to the insurer.

11. The insurer is directed to deposit the entire enhanced portion of the award with the tribunal with corresponding interest within 30 days. The enhanced portion in entirety shall fall to the share of the first appellant / Jyoti (widow).

12. The appeal and the application filed therewith stand disposed of in above terms.

**R.K.GAUBA, J.**

**OCTOBER 24, 2017**
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