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

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Judgment delivered on: 13.07.2017

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MAC.APP. 227/2017 & CM No.9251/2017

THE ORIENTAL INSURANCE CO LTD. Appellant
Through: Mr. Pankaj Seth, Advocate.

Versus

PREM DEVI & ORS. Respondents
Through: Mr. S.N. Parashar & Ms Pankaja
Kumari, Advocates for all Respondents.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. The appeal has impugned the award dated 20.01.2017 of the MACT passed in Suit No.5217/16 on the ground that since the claimants have not been able to prove total negligence on the part of the driver of the insured vehicle, the Insurance Company would not be liable to pay the awarded amount of Rs.17,66,436/-. The other grounds of challenge are that the amounts awarded under the various heads are too high. The awarded amount is as under:-

“i.	Loss of dependency	Rs.13,46,436/-
ii.	Loss of love and affection	Rs. 2,00,000/-
iii.	Funeral expenses	Rs. 25,000/-
iv.	Loss of Estate	Rs. 25,000/-
v.	Loss of consortium to petitioner no.1	Rs. 1,50,000/-
vi.	Costs of proceedings	Rs. 20,000/-
<u>Total</u>		<u>Rs. 17,66,436/-”</u>

2. Apropos the amounts of Rs.2,00,000/- and Rs.1,50,000/- granted towards loss of love and affection and loss of consortium respectively, the Court is of the view that these are neither exorbitant nor irrational in view of the judgment of this Court in MAC. APP. No.186/2012 titled as ***ICICI Lombard General Insurance Co. Ltd. Vs. Meena & Ors.*** decided on 16.07.2012. The other non-pecuniary amounts awarded too are justified and need no interference by this Court.

3. Apropos the main ground that the witness has not been able to prove the complete negligence of the offending vehicle, the Court notes that PW2 Mr. Ram Kesh deposed that on 19.09.2013 he and Madan Lal were going on a Motor Cycle bearing Registration No.HR-26-BL-4612, it was being driven by the former when all of a sudden, the offending vehicle TATA Tempo 407 bearing Registration No.HR-55-B-8316, being driven by respondent No.1/Ranjeet Yadav, came from behind and hit the motorcycle. Due to forceful impact, Madan Lal fell down on the metal road; he was taken to the hospital where he was declared brought dead. The evidence of Ram Kesh (PW2) was considered by the Trial Court and dealt with as under:-

“7. Smt. Prem Devi (petitioner no.1) in her affidavit (Ex.PW-1/A), filed in evidence reiterated the facts of her claim petition, as described above. Sh. Ram Kesh (PW2) is stated to be driver of motorcycle, on which victim was travelling, at the time of accident. It is sworn on oath by this witness in his affidavit (Ex.PW2/A) that on 20.09.2013, he was driving motorcycle no. HR 26bl-4612 on which Madan Lal was sitting as a pillion rider. He was going on left side of road, driving said motorcycle properly. At about 9:30 pm, when they reached near Bilaspur Chowk at Gurgaon, Haryana a tempo bearing no. HR 55-B-8316

came thee from behind. It was being driven by respondent no.1, at very fast speed, rashly, negligently and in a zig zag manner. It hit their motorcycle from their back side. Due to which their motorcycle fell down on metallic road. Head of Madan Lal was crushed in that accident. He was taken to Life Line Health Care Hospital, Gurgaon, where he was declared 'brought dead'. Postmortem on dead body of Madan Lal was conduct in government hospital, Gurgaon. Ranjeet Yadav (respondent no.1) was arrested by police and offending tempo was also taken into police custody. A case FIR No.302/13, was registered in PS Bilaspur, Gurgaon, Haryana about this accident on his statement.

8. *No contradiction appeared in deposition of PW2. In his cross examination by Ld. Counsel for respondent no.3, said witness denied a suggestion that said accident took place, due to his own negligence. I have no reason to disbelieve his testimony, particularly when said witness was not cross examined by respondent no.1, to prove that he was not negligent in his driving.*

9. *Apart from deposition of PWs, particularly PW1, the fact that victim (Madan Lal) died due to injuries is supported from documents put on file by police i.e. MLC/ post-mortem report etc. Cause of death of victim (Madan Lal), is stated to be hemorrhagic shock due to ante-mortem blunt force impact.*

10. *Considering evidence as discussed above, it is well established that accident in question took place due to rash or negligent driving of tempo no.HR55 B 8316 by respondent no.1. It is not in dispute that said tempo was owned by respondent no.2 and insured with respondent no.3. Petitioners, being LR's of victim (Madan Lal) are will within their rights to claim compensation from respondents. Being insurer, respondent no.3 is primarily liable to pay compensation."*

4. The learned counsel for the appellant submits that as the motorcycle rider Ram Kesh would obviously be looking ahead on the road, he could not have seen whether the vehicle behind him was being driven rashly. Hence it is not conclusively established that the offending vehicle was being driven at a “very fast speed, rashly, negligently and in a zig-zag manner”. Therefore, the impugned order has erred in concluding that the offending vehicle was absolutely liable for the death of the pillion rider. The argument is untenable because what has to be kept in mind is that the motorcycle was hit from behind by the offending vehicle at 9:30 pm in the evening, the pillion rider fell off on the road and succumbed to fatal injuries sustained in the motor accident. Both vehicles were moving on the road in the same directions. The motorcycle was followed by the offending vehicle. Therefore, only the vehicle ahead i.e. the motorcycle could have been hit from behind. The fault of the latter would be a natural assumption. In the absence of any material on record to show any fault of the motorcycle rider, the fault of the vehicle behind it would be absolute. An FIR was registered, Ranjeet Singh, owner of the offending vehicle was taken into police custody and the vehicle was subsequently released.

5. For the aforesaid reasons, the Court is unable to agree with the submissions of the appellant. The appeal is without merit and is dismissed accordingly. The pending application also stands disposed off.

NAJMI WAZIRI, J.

JULY 13, 2017

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