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

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Date of Decision: 12th September, 2017

+ MAC.APP. 496/2014

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

versus

SASMITA SAHU & ORS Respondents
Through: Mr. Sunil Kumar, Advocate for
respondents No.1 to 4

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

JUDGMENT (ORAL)

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs.23,89,100/- has been awarded to respondents No.1 to 4.
2. The accident dated 21st June, 2013 resulted in the death of Hemant Kumar Das. The deceased was aged 28 years at the time of the accident and was survived by his widow, son and parents, who filed the application for compensation. The deceased was in private service earning Rs.15,000/- per month. However, the Claims Tribunal took the minimum wages of Rs.9,386/-, added 50% towards future prospects, deducted 1/4th towards his personal expenses and applied the multiplier of 17 to compute the loss of dependency of Rs.21,54,100/-. The Claims Tribunal awarded Rs.1 lakh

towards loss of love and affection, Rs.1 lakh towards loss of consortium, Rs.10,000/- towards loss of estate and Rs.25,000/- towards funeral expenses. The total compensation awarded was Rs.23,89,100/- along with interest @ 9% per annum.

3. Learned counsel for the appellant urged at the time of the hearing that the deceased was contributory negligent and, therefore, the compensation is liable to be reduced on the ground of contributory negligence. It is further submitted that the future prospects of 50% should not be taken into consideration to compute the compensation.

4. There is merit in the contention of learned counsel for the appellant with respect to the plea of contributory negligence. The deceased was driving motorcycle No.DL-3S-BN-8176 which hit the stationary truck bearing No.HR-38L-5288 parked in the middle of the road without any indication. The police has registered the FIR against the driver of the stationary truck. The FIR, site plan as well as the photographs of the accident have been seen in the record of the Claims Tribunal from which it is clear that the truck had been wrongly parked in the middle of the road. However, the accident could not have occurred if the deceased had been careful. In that view of the matter, the deceased was contributory negligent. In the facts and circumstances of this case, Rs.2,89,100/- is deducted from the compensation amount of Rs.23,89,100/- towards the contributory negligence of the deceased.

5. With respect to the second contention urged by learned counsel for the appellant, there is no infirmity in the award of future prospects. Respondents No.1 to 4 are held to be entitled to compensation of Rs.21 lakh along with interest @ 9% per annum.

6. The appeal is partly allowed and the compensation amount of Rs.23,89,100/- is reduced to Rs.21 lakh along with interest @ 9% per annum.

7. The appellant has deposited the entire compensation with the Registrar General of this Court in terms of the order dated 26th May, 2014 out of which 70% has been released to respondents No.1 to 4. The Accounts Officer of this Court shall calculate the amount to which the respondents No.1 to 4 are entitled in terms of this judgment and the amount liable to be refunded to the appellant.

8. List for disbursement of the amount to respondents No.1 to 4 on 24th October, 2017.

9. Respondents No.1 to 4 shall remain present in Court on the next date of hearing along with passbooks of their savings bank account near the place of their residence as well as PAN Card and Aadhaar Card.

10. The statutory amount be refunded to the appellant.

11. Copy of this order be given *dasti* to counsels for the parties under signatures of the Court Master.

SEPTEMBER 12, 2017
rsk

J.R. MIDHA, J.