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

Decided on: 4th July, 2017

+ **MAC APPEAL 256/2017 and CM APPL.10134/2017 (stay)**

THE ORIENTAL INSURANCE CO. LTD. Appellant

Through: Mr. Pradeep Gaur, Advocate

versus

KAMLESH KUMARI & ORS. Respondents

Through: Mr. S.N. Parashar, Advocate

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

JUDGMENT (ORAL)

1. Rich Pal Singh, aged 59 years, working at that time as Junior Administrative Officer in the office of Chief Medical and Health Officer, Sri Ganga Nagar, Rajasthan, died as a result of injuries suffered in motor vehicular accident that occurred on 24.03.2014 statedly due to rash driving of vehicle described as Gramin Seva Tata Magic bearing registration No.DL-02W-5522 (the offending vehicle) at main road Madhu Vihar, near Bus Stop, Dwarka, Sector-5, New Delhi. The offending vehicle is stated to have been owned on the relevant date by the fifth respondent, the fourth respondent being its driver, it being covered by an insurance policy against third party risk issued by the appellant. The widow and two married daughters of the deceased, they being first, second and third respondents herein

(collectively, the claimants) took out accident claim case, MACP No.237/2016, before the Motor Accident Claims Tribunal. The said petition, after inquiry, resulted in judgment dated 07.12.2016 whereby compensation in the sum of Rs.37,94,914/- was awarded with interest @ 10% per annum calculated with effect from the date of filing of the petition (16.05.2014).

2. The insurance company which has been burdened with the liability to pay has come up with the present appeal questioning the said award.

3. The breakup of the compensation computed by the Tribunal is indicated in the impugned judgment as under:-

S.No.	Head	Amount in Rs.
1.	Loss of dependency	29,66,544/-
2.	For funeral expenses	25,000/-
3.	Loss of consortium	1,00,000/-
4.	Loss of estate	1,00,000/-
5.	Medicines & Treatment	3,03,370/-
6.	Loss of love and affection to children (1,00,000/- x 3)	3,00,000/-
	TOTAL	37,94,914/-

4. The insurance company has argued that it was incorrect on the part of the Tribunal to deduct only one-third towards personal and living expenses of the deceased on the assumption that all the three

claimants were dependent on the deceased. It is argued that the two married daughters could not have been treated as dependents and therefore, the claim only of widow could have been entertained and, for this reason, deduction towards personal and living expenses should have been to the extent of 50%.

5. In the context of loss of dependency, the insurance company also submits that the emoluments of amount payable towards income tax should have been deducted while calculating the loss of dependency and in this context it relies on *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121.

6. *Per contra*, the claimants argued through the learned counsel that given the fact that the deceased was in regular permanent employment, prospects of increase in future to the extent of 15% should have been allowed.

7. The insurance company further points out that the damages towards loss of love and affection have been granted @ Rs.1,00,000/- per claimant which, in its submission, is not correct. On the other hand, the claimants argued that given the fact that the accident had occurred on 24.03.2014, the compensation on account of loss of love and affection and loss of consortium should have been granted at the rate of Rs.1.5 lacs, in terms of the view taken by this Court in *Shriram General Insurance Co Ltd v. Usha*, MAC.APP. 160/2015, decided by this court on 05.05.2016. The counsel for the claimants also argued that on the lines of the view taken in the said case, the funeral

expenses also should have been at the higher rate than the amount of Rs.25,000/- only.

8. The final grievance of the insurance company is as to the rate of interest, its submission being that interest @ 10% per annum is excessive.

9. Having heard both sides at length this court is of the view that the Tribunal has fallen in error on various counts.

10. In *Sarla Verma (Smt.) & Ors.* (supra), the Supreme Court clearly ruled that the starting point for calculating the compensation is to find out the actual income of the deceased less income tax payable thereupon. As per the proof adduced before the Tribunal, the deceased was in receipt of gross emoluments of Rs.41202/- per month, and from this an amount of Rs.2,000/- was deducted per month on account of income tax. This would mean his monthly emoluments were Rs.39,202/- (41202/- - 2,000/-).

11. In *United India Insurance Company Limited v. Kamla & Ors.*, MAC APP. 548/2013, decided on 28.03.2016, this court had noted ruling of the Supreme Court in *K. R. Madhusudhan & Ors. vs. Administrative Officer & Anr.*, (2011) 4 SCC 689 to hold that where concrete and irrefutable evidence showing definitive trend of progressive rise in the income in future has been adduced, the element of future prospects has to be factored in, even in case where the victim was in the age group of 50-60 years, it being restricted to the extent of

15% for such age group, given the dispensation in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54.

12. Thus, adding the element of prospects of future increase of 15%, the loss of dependency will have to be worked out on the assumed income (39,202/- x 115/100) Rs.45,082/-.

13. The married daughters (second and third claimants) cannot be treated as those financially dependent, unless a concrete proof to such effect is adduced which in the present case is amiss. Therefore, it has to be concluded that the first claimant (widow) only had suffered the dependency loss. In these circumstances, the personal and living expenses to the extent of 50% will have to be deducted. Thus, loss of dependency on which compensation is to be awarded is calculated as (45,082/- x ½) Rs.22,541/-.

14. The counsel on both sides agree that given the age, the multiplier of nine (09) was correctly adopted by the Tribunal. Thus, the loss of dependency which has to be compensated is worked out as (22,541/- x 12 x 9) Rs.24,34,428/-.

15. The claimants have proved expenditure of medicines and treatment to the tune of Rs.3,03,370/-. There is no question raised with regard to the correctness of the said finding. Therefore, award to that extent is upheld.

16. Further, having regard to the date of the accident and the view taken by this court in *Usha (supra)* MAC APP.160/2015, decided on 05.05.2016, award under the non-pecuniary heads of loss of

consortium, loss of love and affection, loss to estate and funeral expenses is modified to Rs.1,50,000/-, Rs.1,50,000/-, Rs.50,000/- and Rs.50,000/- respectively.

17. Thus, the total compensation awarded in the case is computed as (Rs.24,34,428/- + Rs.3,03,370/- + Rs.1,50,000/-, Rs.1,50,000/-, Rs.50,000/- and Rs.50,000/-) Rs.31,37,798/- rounded off to Rs.31,38,000/-.

18. The award is, thus, reduced to Rs.31,38,000/-. Having regard to the consistent view taken by this court, the rate of interest payable thereupon is reduced to 9% per annum from the date of filing of the Detailed Accident Report (DAR) (16.05.2014) till realization.

19. Given the fact that second and third claimant have not been treated as dependents, the apportionment of award in their favour as per the dispensation of the Tribunal is set aside. The entire money being paid as compensation should go to the first claimant (the first respondent only). It shall be put in fixed deposit receipt substantially in terms of the directions passed in the impugned award, the amount allowed to be released in cash only being remitted for immediate use.

20. In terms of the order dated 14.03.2017 of this court, the insurance company had deposited the entire awarded amount with the Tribunal. The Tribunal shall release the amount in terms of the award as modified above, refunding the balance to the insurance company with corresponding interest

21. Statutory amount, if deposited, shall also be refunded to the appellant insurance company.

JULY 04, 2017

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R.K.GAUBA, J.

