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

*Decided on: 11<sup>th</sup> July, 2017*

+ **MAC APPEAL No. 311/2009 & CM No. 9048/2009**

**ORIENTAL INSURANCE CO. LTD.** ..... Appellant  
Through: Ms. Neerja Sachdeva, Adv.

versus

**ANISA BEGUM & ORS.** ..... Respondents  
Through:

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

**JUDGMENT (ORAL)**

1. Riyasat Ali, born on 12.06.1971, working as a Lower Division Clerk with Central Ordinance Depot, Delhi Cantt. at gross emoluments of Rs. 9640/- per month, died in a motor vehicular accident that occurred on 22.02.2006, statedly due to negligent driving of truck bearing No. HR 63 5617, insured with the appellant company (insurer) against third party risk. His legal heirs, first to sixth respondents (collectively, the claimants) took out accident claim proceedings (MACT suit No. 128/09/06) on 01.05.2006. The motor accident claims tribunal, after inquiry, by judgment dated 30.03.2009, upheld the case of death being on account of negligent driving of the truck and awarded compensation in the sum of Rs. 28,97,000/- with interest directing the insurance company to pay.

2. The insurance company filed the present appeal assailing the mode of computation of the compensation.
3. The claimants having been served, the appeal was admitted and directed to be shown in the list of 'regulars' to come up on its own turn. Earlier, by order dated 07.07.2009, the execution of the award was stayed subject to the insurance company making the payment of Rs. 20 lakhs along with interest within the period specified. The said amount was directed to be released in accordance with the terms indicated at that stage. The proceedings recorded on 24.11.2009 indicate that the appellant deposited Rs.23,50,547/- with UCO Bank, Delhi High Court Branch on 07.08.2009. The UCO Bank was directed to keep the said amount in fixed deposit till the claimants approached it for release. After the appeal had been put in the list of 'regulars', an application was moved on behalf of the claimants which was allowed by order dated 17.11.2014 permitting Rs.5 lakhs to be released in favour of the first respondent.
4. When the appeal was taken up, on its turn, initially none would appear. After the presence of the respondents had been secured, the matter could not be heard as the claimants' counsel sought adjournment. Thus, the appeal had to be adjourned on 16.01.2017. Since no one has appeared on the subsequent date, court notices were issued. The counsel for the claimants has been served but has failed to appear today. Given the old pendency of the appeal, there is no reason to defer the hearing yet again.
5. The learned counsel for the appellant has been heard and the record perused.

6. The mode of calculation of loss of dependency adopted by the tribunal is strange. On the basis of monthly salary proved by the claimants at Rs. 9640/-, it assumed that it would increase to Rs. 32,000/- per month by 2,031 when the deceased would have retired from service. The evidence also showed that the first respondent (widow) is in receipt of family pension of Rs.3,000/- per month. The tribunal did give allowance for this but assumed that it would have increased to Rs.9,000/- in the corresponding period. There is no rationale for either of two calculations. The tribunal has also deducted certain other benefits accruing to the widow, they being in the nature of General Provident Fund, Group Insurance and gratuity. Such service benefits could not have been discounted. No deduction was made on account of personal and living expenses. The multiplier of 17 was adopted though the deceased was almost 35 years old.

7. In above facts and circumstances, the calculations are not in sync with dispensation in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121.

8. For re-computing the compensation the monthly salary of Rs. 9640/- has to be reduced by the family pension of Rs.3,000/- per month. Given the age of the deceased, and the nature of employment, the element of future prospects of increase at 50% will have to be factored in. Similarly, given the number of dependents, personal expenses to the extent of 1/5<sup>th</sup> would need to be discounted. Further, the multiplier of 16 would apply.

9. Thus, the total dependency loss comes to  $(9640 - 3,000 \times 150 \div 100 \times 4 \div 5 \times 12 \times 16)$  Rs. 15,29,856/- rounded off to Rs. 15,30,000/-.

10. The tribunal awarded non-pecuniary damages on account of loss of love and affection at Rs. 60,000/- besides Rs.10,000 towards funeral expenses. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, compensation in the sum of Rs.1 lakh each on account of loss of love & affection and loss of consortium and Rs. 25,000/- each towards loss of estate and funeral expense are added.

11. Thus, the total compensation payable in the case is computed as  $(15,30,000 + 1,00,000 + 1,00,000 + 25,000 + 25,000)$  Rs.17,80,000/-.

12. It is noted that the tribunal awarded interest @ 7.5% only. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*], the rate of interest is increased to 9% per annum from the date of filing of the petition till realization.

13. The apportionment of the modified award shall be in the ratio indicated in the order dated 07.07.2009. The registry shall calculate the amounts payable to the respective claimants in terms of the modified award accordingly. Pursuant to the directions in the said order dated 07.07.2009, substantial portion of the award would be lying in fixed deposit receipts. The registry shall ensure that only such amount is released to the claimants as is now apportioned to them under the modified award and excess is refunded to the insurance

company. In the event of there being any deficiency, the Joint Registrar (Judicial) shall issue necessary directions.

14. Statutory amount shall be refunded.

15. The appeal is disposed of in above terms.

**JULY 11, 2017**

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

