

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

Date of decision: January 25, 2017

+ **MAC.APP. 429/2008 & C.M.10894/2008 & C.M.No.581/09 & C.M.No. 15581/2009**

NATIONAL INSURANCE CO. LTD. Appellant

Through: Mr. Pradeep Gaur, Advocate

Versus

MAHINDER SINGH & ORS.Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
ORAL

%

1. Impugned Award of 31st March, 2008 grants compensation of ₹4,50,000/- with interest @ 7.5% *per annum* on account of death of a housemaid-Rekha Devi aged 42 years in a vehicular accident on 1st November, 2004. The facts of this case are already noted in the impugned Award and so, needs no reproduction. Suffice to note that appellant-insurer had also got examined concerned witness (R2W1) from the Transport Authority and had placed on record details of licence particulars as Ex.R2W1/A and as per this witness, the licence was valid on the day of the accident.

2. By taking the income of deceased as ₹40,000/- *per annum* and by applying the multiplier of 15, loss of income has been assessed by learned Tribunal at ₹6 lacs and after deducting 1/3rd towards personal expenses,

the income of the deceased has been taken to be ₹4 lacs. Compensation of ₹10,000/- has been granted towards '*loss of consortium*' and ₹5,000/- towards '*funeral expenses*', '*loss of estate*', etc. and ₹25,000/- has been granted towards *loss of love and affection*.

3. Challenge to impugned Award by learned counsel for appellant-insurer is on the ground that driver's driving licence of the vehicle in question was for Light Motor Vehicle (Commercial) and was not for driving motorcycle and so, the liability is of owner of vehicle in question to pay the compensation awarded. Attention of this Court is drawn to Sub-section 2 of Section 10 of *Motor Vehicles Act, 1988* to submit that licence in question was not valid for driving motorcycle with or without gear and so, recovery rights ought to have been granted to appellant-insurer. Reliance is placed upon Supreme Court's decision in *Oriental Insurance Company Limited Vs. Zaharulnisha & ors.* (2008) 12 SCC 385 to submit that a scooterist having a driving license for heavy motor vehicle was held to be invalid being violative of Section 10(2) of The Motor Vehicles Act and the recovery rights were granted to the insurer.

4. Despite substituted service, none has appeared on behalf of contesting respondent No.5-owner of the vehicle in question. Even before learned Tribunal, respondent-owner was *ex parte*. So, nothing is on record to indicate that owner had exercised due diligence.

5. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that quantum of compensation granted is just and reasonable, but since the driver of motor cycle in question was holding a driving license for light motor vehicle (which is

not inclusive of motor cycle), so it is invalid in view of Sub-Section 2 of Section 10 of *Motor Vehicles Act, 1988*. Applying the ratio of Supreme Court's decision in *Zaharulnisha (supra)*, to the facts of instant case, it is held that though the liability to pay compensation is not of appellant but in the facts of this case, the awarded amount deposited by appellant in terms of order of 4th August, 2008 be released to respondents-claimants, as directed in the impugned Award.

6. In view of the aforesaid, appellant is granted recovery rights against respondents No.5-owner and respondent No.6-driver, who are held to be jointly and severally liable to pay the awarded amount with interest to appellant.

7. The statutory amount deposited, if any, be refunded to appellant as per rules.

8. The impugned Award is accordingly modified and this appeal and applications are disposed of.

(SUNIL GAUR)
JUDGE

JANUARY 25, 2017
s/r