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

Decided on: 20th September, 2017

\+ MAC APPEAL No. 608/2010

ORIENTAL INSURANCE COMPANY LTD. ..... Appellant
Through: Mr. Praveen Sehrawat & Mr. Abhishek Kumar, Advs.

versus

RAJENDER SINGH & ORS. ..... Respondents
Through: None.

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

JUDGMENT (ORAL)

1. Dharampal, aged 25 years, who earned his livelihood working as a driver, yet unmarried, suffered injuries in motor vehicular accident that occurred on 29.05.2006 at about 3:45 a.m., it involving negligent driving of truck bearing registration no. HR 55C 5844, admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question and died in the consequence. First to sixth respondents, they being his siblings and members of the family (collectively, the claimants), instituted accident claim case (suit no. 276/2008) on 15.11.2006. The tribunal held inquiry and, by judgment dated 13.05.2010, awarded compensation in the total sum of Rs. 5,70,000/- and directed the insurer to pay with

interest @ 9% per annum, the said amount inclusive of Rs. 4,00,000/- towards loss of dependency.

2. The insurer questions the award under the head of loss of dependency, this in addition to another amount of Rs. 10,000/- towards loss of estate, submitting that since all the claimants were well-settled in their respective lives, there being no proof of dependency, the claim could not have been treated as one for loss of dependency. It is submitted that instead of 50% of the notional earnings of the deceased being treated as dependency loss, only 1/3rd should have been granted as loss to estate following the view taken by a learned single judge in such situation in *Keith Rowe vs. Prashant Sagar & Ors. MAC Appeal No. 601/2007 dated* 15.01.2010.

3. It is noted that the first claimant (first respondent) Rajinder Singh appearing as witness (PW-3) on the basis of his affidavit had stated that the claimants were financially dependent on the deceased and during cross-examination, explained that both he (Rajinder Singh) and the deceased (Dharampal) being the elder brothers were looking after and supporting the rest of the family financially. The case of *Keith Rowe* (supra) is distinguishable as it concerned the claim of the husband in a case where wife had died. The evidence of PW-3 about the dependency loss has remained unimpeached. The contention of the insurance company that brothers can never be treated as dependents being unacceptable as a thumb rule.

4. In above view, the appeal is devoid of substance and is dismissed.

5. The amount deposited by the insurance company in terms of order dated 14.09.2010, shall now be released to the claimant in terms of the impugned judgment.

6. Statutory deposit is forfeited as costs in favour of Delhi High Court Legal Services Committee.

R.K.GAUBA, J.

SEPTEMBER 20, 2017
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