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

Decided on: 11th September, 2017

\+ MAC.APP. 325/2016 & CM No. 31952/2017 (cross-objections)

UNITED INDIA INS. CO. LTD. .... Appellant

Through: Mr. Animesh Sinha, Adv.

versus

KAVITA SHARMA & ORS. ..... Respondents

Through: Mr. Manish Maini, Adv. for R-1 to 3.

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

<u>JUDGMENT (ORAL)</u>

1. Dinesh Kumar, then aged 39 years, employed as security guard with a private security agency “Sky Securities”, suffered injuries in motor vehicular accident that occurred on 26.02.2014 at about 06:10 AM, due to negligent driving of bus bearing registration no. DL 1PC 7199, admittedly insured against third party risk with the appellant insurance company for the period in question and died in the consequence. Accident claim case (MACP 107/2014) instituted on 05.04.2014 by his wife and two children, they being first to third respondents (the claimants), was decided by the tribunal after inquiry, by judgment dated 14.01.2016, awarding compensation in the sum of Rs. 23,82,760/-, the liability having been fastened on the insurer to

pay the same with interest @ twelve per cent (12%) per annum, the said amount inclusive of Rs. 19,07,760/- towards loss of dependency.

2. The insurer is in appeal and submits that though the engagement of the deceased with the private security agency was proved through the evidence of Nilofar Khan (PW-2) in the course of which salary slips for the period May, 2012 to March, 2014 was brought on record, the tribunal has accepted salary of Rs. 15,898/- as the benchmark, it being based on the salary slip for the month February, 2014 (Ex.PW-2/2), ignoring the fact that the salary included overtime allowance which varied from month to month. The submission of the insurer is that instead of taking the last payment as the benchmark, average should be drawn.

3. It is noted that the basic pay and certain allowances including house rent allowance and washing allowance were constant, they adding up to Rs. 12,119, the variation in the payments on wages being on account of overtime allowance. With the consent of both sides, the average (Rs. 1312 + 1368 + 2736 + 2052 + 3420 + 4788 = 15676) of six months preceding the date of death has been taken as Rs. 2612.60, rounded off to Rs. 2,613/- per month towards overtime allowance. Since such allowance was a regular income of the deceased, the total earnings on which the loss of dependency can be fairly computed is calculated at (12,119 + 2,613) Rs. 14,732/-.

4. The claimants have also filed cross-objections (CM No.31952/2017) which are pressed to point out that the tribunal ignored the need to factor in the element of future prospects of

increase. Indeed, given the proof of engagement in the employment as security guard and the wages paid over almost two years, the element of future prospects deserves to be added. Since the deceased was 39 years old such factor will have to be to the extent of 50% (fifty per cent).

5. The tribunal had deducted 1/3rd towards personal and living expenses and applied the multiplier of 15 in which regard there is no dispute. The loss of dependency is thus, recomputed as (14732 x 150 ÷ 100 x 2 ÷ 3 x 12 x 15) Rs. 26,51,760/-, rounded off to Rs. 26,52,000/- (Rupees twenty six lakhs fifty two thousand only).

6. It is noted that the non-pecuniary awards are deficient to some extent. Therefore, following the ruling in *Shriram General Insurance Co Ltd v. Usha* decided by this court on 05.05.2016, non-pecuniary damages in the sum of Rs.1,50,000/- each towards loss of love & affection and towards loss of consortium and Rs.50,000/- each towards loss of estate and funeral expense are to be added.

7. Hence, the total compensation payable in the case comes to (26,52,000 + 1,50,000/- + 1,50,000/- + 50,000/- + 50,000/-) Rs.30,52,000/- (Rupees thirty lakhs and fifty two thousand only).

8. The tribunal has not given any special reasons as to why the case merited levy of interest @ 12% (twelve per cent) per annum which is higher than ordinary. 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 reduced to 9% (nine per cent) per annum from the date of filing of the petition till realization.

9. By order dated 22.04.2016, the insurance company had been directed to deposit the entire awarded amount with interest @ nine per cent (9%) per annum and out of such deposit 50% (fifty per cent) was allowed to be released. The tribunal shall now calculate afresh the balance of the amount payable to the claimants and release the same availing the remainder, it being the obligation of the insurance company to satisfy the balance of its liability by requisite deposit with the tribunal within thirty days.

10. This disposes of the appeal and the cross objections.

11. The statutory deposit shall be refunded.

R.K.GAUBA, J.

SEPTEMBER 11, 2017
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