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

Decided on: 17th July, 2017

\+ MAC APPEAL No.79/2017

THE ORIENTAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. J.P. N. Shahi, Adv.

versus

SHANNO & ORS. ..... Respondents

Through: Mr. Ashok Kumar Jha, Adv. for R-1 to 5.

\+ MAC APPEAL No.308/2017

SHANNO & ORS. ..... Appellants

Through: Mr. Ashok Kumar Jha, Adv.

versus

MOHD. RIZWAN & ORS. ..... Respondents

Through: Mr. J.P.N. Shahi, Adv. for R-3.

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

<u>JUDGMENT (ORAL)</u>

1. Shamshad Ali, aged 38 years, died in a motor vehicular accident that occurred on 02.01.2009, involving vehicle bearing registration no. HR 38C 7768. On the basis of finding that the accident had occurred due to negligent driving of the said vehicle, its insurer Oriental

Insurance Company Ltd. (appellant in MAC Appeal No. 79/2017) has been called upon to pay compensation which was calculated in the total sum of Rs. 11,10,740/- with interest in favour of the first to fifth respondents (claimants) in the said appeal, they having come up with their independent appeal (MAC Appeal No. 308/2017) contending that the income of the deceased was wrongly computed in the proceedings before the Motor Accident Claims Tribunal on their claim petition [MACT case no.449402/16 (old no. 103/15].

2. Both sides are aggrieved with the calculation of compensation. The contention of the insurer is that future prospects of increase to the extent of 50% could not have been added since income was computed on minimum wages. The contention of the claimants, on the other hand, is that the deceased was in private service with M/s Shri Durga Enterprises at higher wages which plea was wrongly rejected.

3. During the course of hearing, the counsel for the claimants fairly conceded that formal evidence of employment with M/s Shri Durga Enterprises was not adduced. He submitted that the claimants may be granted another opportunity to prove the said employment by cogent evidence. The counsel for the insurer submitted that he had nothing to say on this request.

4. In above fact-situation, impugned judgment is set aside to the extent it determined the amount of compensation. The insurer and the claimants are relegated to further inquiry into this aspect before the tribunal. During such further inquiry, the claimants will be granted another opportunity to prove the said private employment and income accruing therefrom. Needless to add, it shall be their responsibility to

produce the necessary witnesses, if so required with the assistance of the tribunal. The insurance company will be entitled to lead evidence in rebuttal. The tribunal shall take a fresh decision on the issue of compensation after affording such opportunity.

5. In terms of order dated 20.01.2017 (in MAC Appeal No. 79/2017), the insurance company had been directed to deposit the entire awarded amount with the tribunal and, by order 27.03.2017, 50% was allowed to be released to the claimants. The said amount already paid will be suitably adjusted from the compensation to be awarded by the fresh judgment of the tribunal.

6. The balance lying with the tribunal shall presently be refunded to the insurance company.

7. It is made clear that this judgment does not disturb the recovery rights which have been granted to the insurance company.

8. Statutory amount shall also be refunded.

9. Both appeals are disposed of in above terms.

R.K.GAUBA, J.

JULY 17, 2017
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