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

***Decided on: 02nd August, 2017***

\+ MAC.APP. 408/2016 and CM 18418/2016

THE ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr. A.K. Soni, Advocate

versus

LAXMI DEVI & ORS ..... Respondents

Through: Mr. Vivek Bansal and Mr. Shiv Shankar, Advocates for R-1 to 4

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

**JUDGMENT (ORAL)**

1. Pappu was driving the car of his employer on 05.09.2013 when it came to be involved in a collision with mini truck bearing registration no.UP-22T-2513 admittedly insured against third party risk with the appellant insurance company (insurer). His wife and three children, first to fourth respondents (collectively the claimants), instituted accident claim case (MACP 39/2016) on 01.10.2013 impleading the driver, owner and insurer of the truck, the first two now being fifth and sixth respondents in the appeal.

2. On the basis of evidence led during inquiry, the Motor Accident Claims Tribunal (Tribunal), by judgment dated 18.03.2016, held that the accident had occurred due to negligence on the part of the truck

driver. It awarded compensation in the sum of Rs.16,23,240/-, it inclusive of non-pecuniary damages in the sum of Rs.1 Lakh each towards loss of consortium and loss to estate and Rs.3 Lakh towards loss of love and affection besides Rs.25,000/- towards funeral expenses, the balance having been added on account of loss of dependency.

3. The insurance company which has been burdened with the liability to pay with interest at 9% p.a., by its appeal, assails the finding of negligence submitting that the car driven by the deceased itself had collided against the truck from behind. It also questions the award under the non-pecuniary heads of damages.

4. The contention of the insurance company about the issue of negligence must be rejected as the evidence clearly shows the truck was ahead of the car and its driver had suddenly applied brakes leading to the collision.

5. The award under the non-pecuniary heads of damages undoubtedly are excessive. Therefore, setting aside the order of the tribunal in such regard, having regard to the date of the accident and following the view taken by this court in *Shriram General Insurance Co Ltd v. Usha,* MAC.APP. 160/2015 decided on 05.05.2016, awards of Rs.1,50,000/- each towards loss of love and affection and loss of consortium and Rs.50,000/- each towards loss of estate and funeral expenses are granted.

6. The award granted by the Tribunal, thus, stands reduced by Rs.1,25,000/-, it being modified to (Rs.16,23,240/- (-) Rs.1,25,000/-) Rs.14,98,240/-, rounded off to Rs.15,00,000/-.

7. The Tribunal had apportioned the award by specifying the amounts in favour of the first respondent (wife). By order dated 16.05.2016, the insurance company had been directed to deposit the entire awarded amount with upto date interest with the Tribunal within the period specified and out of such deposit, 50% was allowed to be released to the claimants in terms of the impugned judgment, the balance kept in fixed deposit receipts. Since the award has been reduced, it is directed that the amounts already released to the other claimants shall be treated as their share in the compensation, the entire balance to be now paid to the first respondent (widow). The balance, however, shall be released to her in the form of two fixed deposit receipts of equal amounts for a period of ten years with right to draw monthly interest.

8. The award is modified accordingly. The Tribunal shall release the balance payment in terms of these directions from out of the deposit made by the insurance company refunding the excess.

9. The statutory amount shall also be refunded.

10. The appeal and the pending application are disposed of in above terms.

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

**AUGUST 02, 2017**
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