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

Decided on: 17th July, 2017

\+ MAC.APP. 336/2017 and CM No.12950/2017

THE ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr. Pankaj Seth, Advocate

Versus

KIRTI & ORS ..... Respondents

Through: Mr. S.N. Parashar, Advocate with Ms. Pankaj Kumari, Advocate for R-1 & 2

\+ MAC.APP. 375/2017 and CM No.14506/2017

THE ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr. Pankaj Seth, Advocate

Versus

KIRTI & ORS ..... Respondents

Through: Mr. S.N. Parashar, Advocate with Ms. Pankaj Kumari, Advocate for R-1 & 2

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

JUDGMENT (ORAL)

1. Both these appeals arise out of a common judgment dated 24.12.2016 of the Motor Accident Claims Tribunal (Tribunal) whereby the claims of the first and second respondents in MACA 336/2017 on account of death of their mother Poonam (MACT case

235/14) and of the first to third respondents in MACA 375/2017 on account of death of Vinod (MACT case no.236/14) were decided. It may be mentioned here that the claimants in the last mentioned case include the minor children of the deceased Vinod (first and second respondents) and his aged father (third respondent).

2. By the impugned judgment, the claimants' case that the accident had occurred due to negligence on the part of Raj Mohan, driver of Santro car bearing no.DL-7CA-1053 (the car) was accepted. The said Raj Mohan has been one of the respondents in these proceedings, Jai Prakash the owner of the car and Oriental Insurance Co. Ltd. (appellant herein) also having been shown in the array as respondents, the last admittedly being the insurer against third party risk of the car for the period in question.

3. By the aforesaid judgment, the compensation in the sum of Rs.26,57,000/- was awarded on account of the death of Poonam and similarly compensation in the sum of Rs.14,14,000/- was awarded on account of the death of Vinod. The liability has been fastened on the insurance company (appellant) to pay the said amount with interest at the rate of 9% p.a. with effect from the date of filing of the detailed accident report (DAR) i.e. 23.05.2014 till realization.

4. The insurance company, by these appeals, assails the impugned judgment in both the cases on the ground that the negligence on the part of the car driver was not properly proved. This contention, in the light of evidence led by the claimants, must be rejected. The claimants had examined Constable Vishnu Sharma (PW-1), who was

the beat constable deputed in the area in question by the local police station. He had seen the accident as he was present on duty at the relevant place. His evidence clearly shows that the car had come at high speed and before hitting against the motor vehicle on which the deceased persons were travelling had jumped red light traffic signal. His cross-examination by all the contesting respondents could not bring out any fact as would raise doubts as to his veracity. His version is supported by the corresponding police record of investigation into the FIR that was registered. Pertinent to note, the car driver Raj Mohan, the respondent, was not examined even at the instance of the owner and the insurer in the inquiry.

5. Both the deceased persons were residents of District Sonepat in the State of Haryana. There is no evidence led showing either of them working for gain in Delhi. In case of Poonam, rather it was conceded that she was a house wife, which is the reason why the tribunal applied the mode of calculation of loss of dependency as per dispensation in *Royal Sundaram Alliance Co. Ltd. Vs. Master Manmeet Singh & Ors., MAC App. 590/2011 dated 30.01.2012*. It is on account of these submissions that the insurance company contends that the minimum wages of State of Haryana should have been adopted for calculating the loss of dependency.

6. In case of Poonam, additional submission is that deduction on account of personal and living expenses to the extent of one-third should also have been made as per the ruling of this court in *Reliance*

General Insurance Company Limited vs. Murgan & Ors., 2016 (3) ACC 452.

7. The learned counsel for the claimants fairly concedes to the above submissions. She agrees that the loss of dependency may be re-computed on the basis of minimum wages payable to the workers in State of Haryana as in force on the date of accident (12.04.2014), the rate being Rs.5547.10p. She further concedes that in calculating loss of dependency in the case of death of Poonam, one-third may be deducted towards personal and living expenses and that there is no occasion for any element of future prospects of increase being added since there was no proof of regular employment.

8. The age of Vinod at the time of death was 29 years and the multiplier of 17 was correctly adopted. Having regard to the number of dependents, one-third is deducted towards personal and living expenses. Hence, the loss of dependency, comes to (5547.10 x 2/3 x 12 x 17) Rs.7,54,405.6p rounded off to Rs.7,55,000/-. The non-pecuniary damages as awarded by the tribunal in the total sum of Rs.2,50,000/- are added and, thus, the total compensation in this case comes to (7,55,000/- + 2,50,000/-) Rs.10,05,000/-, which shall carry interest @ 9% per annum as levied by the tribunal.

9. In the case of claim on account of death of Vinod Kumar, the two minor children were granted Rs.5.5 lacs each from the awarded compensation, the balance going to the father (Suraj Bhan). Since the award has been reduced, the said apportionment will have to be re-adjusted. It is, thus, directed that father (Suraj Bhan) will get 20% out

of the awarded amount and the balance being equally divided amongst two children with corresponding interest.

10. Coming to the claim on account of death of Poonam, following *Royal Sundaram Alliance Insurance Co. Ltd. v. Manmeet Singh* 2012 ACJ 721, the age of the deceased being 26 years, the multiplier of 17 having been correctly applied, on the minimum wages applicable to the State of Haryana, adding the element of 25% towards gratuitous services and deducting one-third towards personal and living expenses, the loss of dependency is re-computed as (5547.10 x 125/100 x 2/3 x 12 x 17) Rs.9,43,006.99p, rounded off to Rs.9,45,000/-. Adding the non-pecuniary damages, as awarded by the tribunal in the total sum of Rs.2,50,000/-, the total compensation in this case comes to (9,45,000/- + 2,50,000/-) Rs.11,95,000/-.

11. The compensation in the case of death of Poonam is, thus, reduced to Rs.11,95,000/- which shall be apportioned equally amongst two claimants, which shall carry interst as levied by the tribunal.

12. The insurance company has deposited the awarded compensation with the tribunal. The insurance company would have deposited the awarded compensation with interest in terms of the first order.

13. The compensation, as modified by this judgment, shall be released to the respective claimants and the excess deposited shall be refunded to the insurance company.

14. The statutory amount, if deposited, shall also be refunded to the appellant insurance company.

R.K.GAUBA, J.

JULY 17, 2017
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