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

Decided on: 23rd August, 2017

\+ MAC.APP. 484/2016 and CM APPL.22751/2016

THE ORIENTAL INSURANCE CO LTD ..... Appellant
Through: Mr. J.P.N. Shahi, Advocate with Ms. Komal Dhingra, Advocate

versus

VEENA & ORS ..... Respondents
Through: Mr.S.N. Parashar, Advocate with Ms. Pankaj Kumari, Advocate

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

JUDGMENT (ORAL)

1. Vijay Kumar, aged 24 years, a bachelor, died in a motor vehicular accident that occurred on 11.01.2013 due to negligent driving of the truck bearing registration No.HR-63A-8375, admittedly insured against third party risk with the appellant insurance company (insurer). His mother, the first respondent (claimant) instituted accident claim case (MACT No.67/2013) on 14.02.2013 seeking compensation.

2. The Motor Accident Claims Tribunal (the tribunal), by judgment dated 28.03.2016, awarded compensation in the total sum of Rs.25,65,000/- with interest @ nine per cent (9%) per annum,

fastening the liability on the insurer. The said amount includes Rs.24,30,000/- towards loss of dependency, this having been calculated on the multiplier of 18, going by the age of the deceased, on the income of Rs.15,000/- per month, besides Rs.1 lac towards loss of love and affection, Rs.10,000/- towards loss of estate and Rs.25,000/- towards funeral expenses.

3. The insurance company is in appeal questioning the computation of loss of dependency on the ground the multiplier of 14 should have been adopted, having regard to the age (41 years) of the claimant mother. *Per contra,* the counsel for the claimant pointed out deficiency in the award under the non-pecuniary heads of damages. Contentions of both sides, as noted above, deserve to be accepted.

4. There is indeed divergence of opinion in various decisions of Supreme Court on the issue of multiplier in cases where the age of the claimant(s) is higher than that of the deceased. Having regard to the rulings of the Supreme Court in *General Manager, Kerala State Road Transport Corporation vs. Susamma Thomas & Ors.,* (1994) 2 SCC 176 and *U.P.S.R.T.C. vs Trilok Chandra* (1996) 4 SCC 362, and considering the decision in *Reshma Kumari V. Madan Mohan* (2013) 9 SCC 65 and *Munna Lal Jain and Anr. vs. Vipin Kumar Sharma and Ors., JT 2015 (5) SC 1,* this court in *National Insurance Company Limited vs. Mohammed Siddique & Ors.,* MAC APP.431/2016, decided on 18th July, 2017, has held as under:

> *"16. Since the decision in Trilok Chandra and Ors., (supra) by a bench of three Hon'ble Judges is prior in time*

in relation to the decisions in Reshma Kumari (supra) and Munna Lal Jain (supra), it is the statement of law on choice of multiplier in the former which is to be taken as the binding precedent. Thus, this court will follow the dictum in the said judgment and adopt the multiplier according to the age of the deceased or that of the claimants, whichever is higher."

5. Hence, the multiplier according to the age of the claimant mother, it being higher, will have to be the bench mark. Thus, the loss of dependency is re-worked as (15,000/- x 150/100 x 1/2 x 12 x 14) Rs.18,90,000/- (Rupees eighteen lacs ninety thousand only).

6. Having regard to the date of the accident (11.01.2013) following the dispensation in MAC.APP.No.160/2015 *Shriram General Insurance Co Ltd v. Usha* decided by this court on 05.05.2016, compensation on account of loss of love and affection is increased to Rs.1,50,000/- and that on account of loss of estate and funeral expenses, Rs.50,000/- each are added.

7. Thus, the total compensation payable in the case comes to (Rs.18,90,000/- + 1,50,000/- + 50,000/- + 50,000/-) Rs.21,40,000/- (Rupees Twenty one lacs forty thousand only).

8. The award is modified accordingly. It shall carry interest as levied by the tribunal.

9. By order dated 03.06.2016, the insurance company had been directed to deposit the entire awarded amount with interest, out of which forty per cent (40%) was allowed to be released. The tribunal

shall now release the balance in terms of the modified award, refunding the excess to the insurance company.

10. The statutory amount shall be refunded to the appellant insurance company.

11. The appeal along with accompanying application stands disposed of in above terms.

12. *Dasti.*

R.K.GAUBA, J.

AUGUST 23, 2017
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