

\$~R-257 & 258

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

Decided on: 22nd September, 2017

+ **MAC APPEAL No. 744/2010**

ORIENTAL INSURANCE CO. LTD. Appellant
Through: **Mr. Amit Gaur & Mr. Pradeep Gaur, Advs.**

versus

SHOBHA & ORS. Respondents
Through: **Mr. O.P. Mainee, Adv. for R-3 to 5.**

+ **MAC APPEAL No. 780/2011**

SHOBHA & ORS. Appellants
Through: **Mr. O.P. Mainee, Adv.**

versus

ORIENTAL INSURANCE CO. LTD. Respondent
Through: **Mr. Amit Gaur & Mr. Pradeep Gaur, Advs.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Sunil Dutt Sharma died in motor vehicular accident that occurred on 02.01.2009 involving negligent driving of truck bearing registration no. HR 12A 8635, admittedly insured against third party risk with Oriental Insurance Company (appellant in MAC Appeal No.

744/2010). The members of his family dependent on him, they being appellants in MAC Appeal No. 780/2011 (collectively, the claimants) instituted accident claim case (suit no. 109/2009) on 13.03.2009, seeking compensation under Section 166, Motor Vehicles Act, 1988. The claim was accepted by the tribunal, by judgment dated 12.08.2010, whereby compensation in the total sum of Rs. 12,68,000/- was awarded with interest @ 7.5 % per annum, the liability having been fastened on the insurer. The said amount included Rs. 12,48,000/- towards loss of dependency, Rs. 5,000/- each towards loss to estate and funeral expenses and Rs. 10,000/- towards loss of consortium.

2. While the insurer by its appeal (MAC Appeal no. 744/2010) questions the computation of loss of dependency submitting that the income was wrongly assessed at Rs. 12,000/- per month, the claimants by their appeal (MAC Appeal No. 780/2011) raise grievance about the non-pecuniary damages and rate of interest submitting that the same are inadequate.

3. It appears that the deceased had submitted income-tax return (ITR) for the assessment year 2006-2007 in September, 2006, copy whereof was submitted before the tribunal (page 203 of the tribunal's record). The claimants also led evidence by examining Sunil Sharma (PW-3) and Dinesh Sharma to prove salary certificates (Ex.PW-1/2 and Ex.PW-1/3), to show that the deceased was working as driver on part time basis with each of them. It is on the basis of such evidence that the tribunal concluded that the income was Rs. 12,000/- per

month, such claim finding corroboration from the other record including the passbook of the bank account maintained by the deceased. In this view of the matter, this Court declines to interfere with the finding on the income of the deceased.

4. In view of the rulings in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, the non-pecuniary damages are found to be inadequate. The awards of Rs. 1,00,000/- each towards loss of love & affection and loss of consortium and Rs. 25,000/- each towards loss of estate and funeral expenses are granted. Thus, there would be a net increase in the award by (2,50,000 – 20,000) Rs. 2,30,000/- (Rupees Two Lakhs Thirty Thousand Only). Ordered accordingly.

5. The tribunal's record shows that in para 13 of the impugned judgment (page 85 of the tribunal's record), that the first claimant Shobha had died on 13.05.2010. Thus the award was distributed in equal shares amongst the remaining claimants. The sixth claimant Harnand Singh died during the pendency of the appeal on 16.08.2014 and consequently his name was struck off.

6. In these circumstances, it is directed that the enhanced portion of the award shall be distributed in equal proportions amongst the remaining claimants.

7. The statutory deposit made by the insurance company shall be refunded.

8. Both appeals are disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 22, 2017

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