

\$~R-269 & 270

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

Decided on: 26th September, 2017

+ **MAC APPEAL No.806/2010**

ORIENTAL INSURANCE CO. LTD. Appellant
Through: Mr. Pavan Kumar for Mr. A.K.
Soni, Adv.

versus

RASHMI JAIN & ORS. Respondents
Through: Mr. Navneet Goyal, Adv. for R-
1 to 4.

+ **MAC APPEAL No.859/2010**

RASHMI JAIN & ORS. Appellants
Through: Mr. Navneet Goyal, Adv.

versus

ORIENTAL INSURANCE CO. LTD.& ORS. Respondents
Through: Mr. Pavan Kumar for Mr. A.K.
Soni, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Rohit Jain, then 38 years old, met with an accident on 14.04.2003 involving negligent driving of car bearing registration no. DL 1Z 0862, admittedly insured against third party risk for the period in question with the appellant insurance company (insurer) and died as a result of injuries suffered. His wife and other members of the family

dependent on him, they being appellants in MAC Appeal no. 859/2010 (collectively, the claimants) instituted accident claim case (MACP 613/03/08) on 02.12.2003 seeking compensation under Section 166 of Motor Vehicles Act, 1988. The tribunal held inquiry, and by judgment dated 14.09.2010, awarded compensation in the total sum of Rs. 15,82,500/- directing the insurer (appellant) to pay the same with interest @ 7.5% per annum. The said amount of compensation was calculated thus:-

S.No.	Heads	Compensation
1.	Loss of dependency (Rs. 7875 x 12 x 15)	Rs. 14,17,500/-
2.	Loss of consortium	Rs. 10,000/-
3.	For Funeral Expenses	Rs. 10,000/-
4.	For loss of Love & Affection	Rs. 1,25,000/-
5.	For Loss of Estate	Rs. 10,000/-
6.	For treatment	Rs. 10,000/-
	Total	Rs. 15,82,500/-

2. The insurer by its appeal (MAC Appeal no. 806/2010) has questioned the calculation of loss of dependency on the ground that the element of future prospects of increase in income to the extent of 50% was wrongly added over and above the income assessed in the sum of Rs. 7,000/- per month. *Per contra*, the claimants, by their appeal (MAC Appeal No. 859/2010), submit that the income was under-assessed and this has led to deficient award being granted under the head of loss of dependency.

3. It is noted that the evidence led by the claimants had clearly brought out that the deceased had been engaged in business as a partner of a firm known as Tarun International, his mother Kailash Jain being the other partner. The income-tax returns (ITRs) of the firm Tarun International were proved for various years, starting from assessment year (AY) 1994-95, as Ex.PA-1 to PA-12, one of them (Ex.PA-9) pertaining to assessment year 2002-2003 which would correspond to the financial year 2001-2002. The said return (of the firm Tarun International) clearly shows that as a partner Rohit Jain had received Rs. 64,497.74 as his share in profits (page 505 of the tribunal's record).

4. The claimants also proved, similarly, the ITRs of Rohit Jain submitted as an individual assessee for various assessment years, starting with 1995-96, the income declared therein being (till the financial year 2000-2001 corresponding to AY 2001-02) on account of share in profits from business of the above said firm. From the next financial year i.e. 2001-2002 (which would correspond to AY 2002-03), however, the source of income changed, in that instead of being a partner in the said firm, the deceased had joined as its salaried employee *w.e.f.* 01.07.2001. This position is reflected in the ITR for AY 2002-2003 (Ex.P-11) (at page 125 of the Tribunal's record), it confirming receipt of Rs. 64,497.74 as share in profits from Tarun International besides Rs. 63,000/- as salary for the period 01.07.2001 to 31.03.2002. The said ITR of the individual (Ex.P-11) corroborates the ITR of the firm (Ex. PA-9).

5. In the above facts and circumstances, it was not fair on the part of the tribunal to assume the income of the deceased only at Rs. 7,000/- per month. The salary at the said rate was the income only for the period of nine months. In these circumstances, the income earlier earned, though as share in the profits of the business, could not have been ignored. It may be added here that in the next financial year 2002-2003 (which would correspond to AY 2003-2004), the deceased had declared his total income to be Rs. 1,20,000/-, the net salary of Rs. 90,000/-, after standard deduction of Rs. 30,000/ having been shown in the ITR (Ex.P-12).

6. The ITRs which have been submitted justify the plea of the claimants that the income of the deceased should have been calculated after clubbing the share of profits with the last salary drawn in the financial year 2001-02 which would precede the year in which the death occurred, it computing to (64,498 + 63,000) Rs. 1,27,498/-. It may be added that the ITRs also provide irrefutable evidence of progressive rise in income justifying the inclusion of the element of future prospects of increase in income to which the insurance company is taking exception [see judgment dated 28.03.2016 in MAC.APP. 548/2013 *United India Insurance Co. Ltd. v. Kamla & Ors.*].

7. The death had occurred on 17.04.2003. For the financial year 2003-2004, the income-tax liability would be Rs. 9,000/- approximately. The same being deducted, the net salary comes to (1,27,498- 9,000) Rs. 1,18,498/-. Against the above backdrop, the loss of dependency is recomputed by including the element of future

prospects of increase in income by 50%, and making deduction of $1/4^{\text{th}}$ towards personal & living expenses, applying the multiplier of 15 as $(118498 \times 150 \div 100 \times 3 \div 4 \times 15)$ Rs. 19,99,653.75/- rounded off to Rs. 20,00,000/-. Adding the other components of compensation granted by the tribunal, the total compensation comes to $(20,00,000 + 1,65,000)$ Rs. 21,65,000/- (Rupees Twenty One Lakhs Sixty Five Thousand only). The award is modified accordingly.

8. Following the consistent view taken by this Court, the rate of interest is increased to 9% (nine percent) per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*]

9. It is directed that the enhanced portion of the award shall fall to the share of the first claimant Rashmi Jain (widow) only, it to be released in her favour in the form of fixed deposit interest bearing receipt taken out from a nationalized bank for a period of seven years with right to draw periodic interest.

10. By order dated 29.11.2010 on MAC Appeal no. 806/2010, the insurance company had been directed to deposit the entire awarded amount with upto date interest and from out of such deposit, 75% (seventy five percent) was allowed to be released to the claimants. The balance lying in deposit shall also now be released to the claimants in terms of the impugned judgment. The insurance company shall satisfy the modified award in above terms by requisite deposit with the tribunal within thirty days.

11. The statutory deposit by the insurance company, however, shall be refunded.

12. Both appeals are disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 26, 2017

nk

