

\$~R-265 & R-266 (*common order*)

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

Decided on: 25th September, 2017

+ **MAC.APP. 792/2010**

ORIENTAL INSURANCE COMPANY LIMITED.... Appellant
Through: Mr. Amit Gaur, Advocate

versus

HARBANS LAL KUMAR & ORS Respondents
Through: Mr. Navneet Goyal, Advocate
for R-1 to R-3

+ **MAC.APP. 824/2010**

HARBANS LAL KUMAR & ORS. Appellants
Through: Mr. Navneet Goyal, Advocate

versus

ORIENTAL INSURANCE COMPANY LIMITED
..... Respondent
Through: Amit Gaur, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Navneet Kumar, 27 years old, having obtained the degrees of Bachelor of Engineering (Electrical) and Master of Business Administration (MBA) was working for gain and died as a result of the injuries suffered by him in a motor vehicular accident that occurred on 31.01.2002, due to negligent driving of tempo bearing

registration no.DL-1LB-4296 (the tempo) and the truck bearing registration No.UP-21-8323 (the truck), his motorcycle having been hit first by the tempo and thereafter he being dragged under its wheels by the truck. The accident claim case (Suit No.696/2008) was filed by his parents (first and second appellants in MAC APP.824/2010) and his wife Upasana Kumar (respondent in these appeals) - collectively, “the claimants”- seeking compensation under Section 166 of the Motor Vehicles Act, 1988. The tribunal held inquiry and, by judgment dated 04.08.2010, found the drivers of both the tempo and the truck to have been negligent, apportioning the liability amongst them in the ratio of 40:60 respectively. It awarded compensation in the total sum of Rs.19,07,133/- fastening the responsibility to pay on the insurers of the two vehicles adding the liability of interest @ 7.5% per annum.

2. The insurer of the tempo presses its appeal (MAC APP.792/2010) to argue that the element of future prospects of increase to the extent of 50% was wrongly added over and above the last income of Rs.10,000/- of the deceased, proved to have been drawn as salary from M/s. Hitachi Group and Life Solution, an entity where the deceased had joined only four days prior to the date of accident, i.e., 28.01.2002. It is also the argument of the insurer of the tempo that the case should have been treated as one of a bachelor’s death since Upasana Kumar, wife of the deceased had admittedly remarried in June, 2003.

3. *Per contra*, the claimants by their appeal submit that the awards under the non pecuniary heads of loss of estate, loss of love and affection, loss of consortium and funeral expenses are inadequate. It is also pointed out by the claimants in their appeal (MAC APP.824/2010) that the mother of the deceased had also passed away during the pendency of the inquiry before the tribunal, a fact which could not be brought to the notice of the tribunal immediately, but the same having been confirmed in appeal

4. The evidence on record of the tribunal shows that the deceased, a qualified engineer, also holding degree of MBA, had earlier worked with M/s. Federal Logic Corporation Ltd, the claimant (father) Harbans Lal Kumar having brought the necessary facts on record as a witness (PW-3). It may be that the deceased had changed job and had joined the services of new employer M/s. Hitachi Group only on 28.01.2002. But then switch over of the job will not mean that his case is to be treated as one of a new incumbent. Going by the record of previous employment, educational qualifications and the terms of engagement with the new employer, irrefutable evidence of progressive increase has been brought on record. For this reason, the element of future prospects of increase cannot be grudged. [See: judgment dated 28.03.2016 in MAC.APP. 548/2013 *United India Insurance Co. Ltd. v. Kamla & Ors.*].

5. The fact that the widow had remarried will not change the calculation, since the said event took place after more than 1½ years of the death. She survived as one of the members of the family dependent

on the deceased and, therefore, the dependency loss is found to be correctly calculated by the tribunal.

6. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, the awards under the non pecuniary heads of damages are increased to Rs.1,00,000/- each on account of loss of love & affection and loss of consortium and Rs.25,000/- each towards loss of estate and funeral expenses.

7. Thus, the award will stand increased by (2,50,000/-(-) 1,05,000/-) Rs.1,45,000/- raising it to (19,07,133/- + 1,45,000/-) Rs.20,52,133/- rounded off to Rs.20,53,000/- (Rupees Twenty Lakhs Fifty Three Thousand Only).

8. It is noted that the tribunal had apportioned the award in the ratio of 10:60:30 in favour of father, mother and widow respectively. Since the mother had died during the pendency of these proceedings, the apportionment will have to be readjusted. It is the view of this court that the widow requires little more than what has been apportioned in her favour. Therefore, it is directed that the father and the widow shall share the award in the ratio of 60:40 respectively.

9. The award is modified in above terms. It shall carry interest as levied by the tribunal.

10. By order dated 25.11.2010 (in MAC APP.792/2010), the insurance company had been directed to deposit the entire awarded amount with the Registrar General within the time specified. By subsequent order dated 07.09.2015, fifty per cent (50%) of the

deposited amount was released to the first and third respondents. The registry shall take steps to release the balance from out of the deposit made.

11. The respective respondents (in MAC APP.824/2010) will be liable to satisfy the enhanced award by requisite deposits with the tribunal. In the event of default on their part, the claimants are at liberty to take out appropriate proceedings to execute the same.

12. The statutory deposit of insurance company (in MAC APP.792/2010) shall be refunded.

13. Both the appeals are disposed of in above terms.

SEPTEMBER 25, 2017

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R.K.GAUBA, J.