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

Date of Decision: February 14, 2017

\+   MAC.APP. 626/2008

ORIENTAL INSURANCE CO LTD ..... Appellant
Through: Mr. Ram N. Sharma, Advocate

versus

MOHD. SHAMIM & ORS .....Respondents
Through: Mr. J.S. Kanwar, Advocate for respondents No.1 & 2
Mr. Sanjeev Bindal, Advocate for respondent No.5

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
%   **(ORAL)**

C.M.45675/2016 (delay)

There is delay of 2748 days in filing the accompanying application for cross-objections.

Upon hearing, I find that averments in paragraph No.3 of the instant application provide sufficient cause to condone the delay. The application is allowed and the delay is condoned.

MAC.APP. 626/2008 & C.M.45674/2016 (cross-objection)

By way of C.M. 45674/2016, cross-objections are sought to be placed on record. The same are taken on record.

By way of these cross-objections, respondents-claimants seek enhancement of compensation.

Challenge to the impugned Award of 3rd September, 2008 in this appeal by appellant-Insurer is on the ground that the recovery rights have not been granted to appellant although a finding has been returned in impugned Award that driver of motorcycle in question was not holding valid driving licence.

Compensation of ₹1,82,500/- has been granted to respondents-claimants on account of death of a seven year old child in a road accident on 21st April, 1998. The factual background of this case is already noticed in impugned Award and so, it needs no reproduction for the reason that there is no substantive challenge to impugned Award. In this appeal, relief is infact claimed against respondents No.3 & 4, who are driver and owner of vehicle in question. As per order of 15th December, 2009, respondents No.3 & 4 were duly represented by counsel, but later on, there is no representation on their behalf. Pertinently, the owner and driver of vehicle in question had not contested the claim petition before learned Tribunal.

Upon hearing and on perusal of impugned Award, I find that the finding returned by learned Tribunal on the validity of driving licence is clinching. To be more specific, the finding returned in impugned Award is that driver of vehicle in question was not holding a valid and effective driving licence on the day of the accident. Infact, in paragraph No.42 of impugned Award, what has been recorded on the liability aspect is as under: -

> *"Though it is proved that the offending vehicle was duly insured with the respondent No.2/insurance company but the insurance company has also proved that the driver of the*

offending vehicle was not holding a valid driving license on the date of accident. Hence, respondent no.2 is held liable to pay the compensation though it is entitled to recover the same from respondent no.1 and 3."

From the aforesaid, it is evident that recovery rights have been granted to appellant. Learned counsel for appellant-Insurer submits that the operative portion of impugned Award is silent on it and it be clarified that appellant has the recovery rights against respondents No.3 & 4, who are owner and driver of vehicle in question. It is noted in order of 15th December, 2009 that as per appellant, entire awarded amount has been paid to respondents-claimants.

Upon hearing both the sides on the appeal as well as the cross-objections, I find that in view Supreme Court's decision in *Kishan Gopal and Another v. Lala and Others,* 2014 1 SCC 244, the total compensation payable for death of a child aged between 5 to 10 years is ₹2 lacs. By applying the afore-noted dictum of Supreme Court in *Kishan Gopal (supra)* to the facts of the instant case, the quantum of compensation awarded is enhanced from ₹1,82,500/- to ₹2 lacs.

The enhanced compensation of ₹17,500/- shall carry the rate of interest @ 7.5% *per annum.*

Upon respondents-claimants' counsel furnishing the bank details of respondents-claimants to appellant within a week, the enhanced compensation with interest be transmitted in equal proportion into respondents-claimants' bank accounts within four weeks.

In view of aforesaid, this appeal and cross objections filed on behalf of respondents-claimants are disposed of while making it clear that appellant shall have recovery rights qua respondents No.3 & 4 in respect of compensation paid by appellant to respondents-claimants.

Statutory deposit, if any, be refunded to appellant-Insurer as per rules.

(SUNIL GAUR)
JUDGE

FEBRUARY 14, 2017
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