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

Decided on: 5th July, 2017

\+ MAC.APP. 266/2017

SHASHI KANT & ORS ..... Appellants

Through: Mr. Nitin Yadav, Advocate

versus

ORIENTAL INSURANCE COMPANY LIMITED & ORS ..... Respondents

Through: Mr. S.P. Jain, Advocate with Mr. Himanshu Gambhir, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

For detailed judgment, the decision dated 5th July, 2017 in MAC.APP. 896/2016, titled *The Oriental Insurance Company Limited vs. Shashi Kant & Ors.* may be referred to.

R.K.GAUBA, J.

JULY 05, 2017

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$~16 to 20 *(common order)*

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

Decided on: 5th July, 2017

\+ MAC.APP. 896/2016 and CM APPL.39991/2016
THE ORIENTAL INSURANCE CO LTD ..... Appellant
Through: Mr. S.P. Jain, Advocate with Mr. Himanshu Gambhir, Adv.

versus

SHASHI KANT & ORS ..... Respondents
Through: Mr. Nitin Yadav, Advocate for R-1 to R-3.

\+ MAC.APP. 266/2017
SHASHI KANT & ORS ..... Appellants
Through: Mr. Nitin Yadav, Advocate

versus

ORIENTAL INSURANCE COMPANY LIMITED & ORS ..... Respondents
Through: Mr. S.P. Jain, Advocate with Mr. Himanshu Gambhir, Adv.

\+ MAC.APP. 902/2016 and CM APPL.40059/2016
THE ORIENTAL INSURANCE CO LTD ..... Appellant
Through: Mr. S.P. Jain, Advocate with Mr. Himanshu Gambhir, Adv.

versus

MEENA YADAV & ORS ..... Respondents
Through: Mr. Nitin Yadav, Advocate for R-1 to R-3.

\+ MAC.APP. 271/2017
MEENA YADAV & ORS ..... Appellants
Through: Mr. Nitin Yadav, Advocate

versus

ORIENTAL INSURANCE COMPANY LIMITED & ORS
..... Respondents

Through: Mr. S.P. Jain, Advocate with Mr. Himanshu Gambhir, Adv.

\+ MAC.APP. 903/2016 and CM APPL.40066/2016

THE ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr. S.P. Jain, Advocate with Mr. Himanshu Gambhir, Adv.

versus

RAJBIR YADAV & ORS ..... Respondents

Through: Mr. Nitin Yadav, Advocate for R-1.

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

JUDGMENT (ORAL)

1. On 01.05.2012 at about 01:30 hours a collision took place between two motor vehicles in the area of village *Vhiknawas,* Police Station Agroha, District Hissar, Haryana, they being car bearing temporary registration No.HR-99-LH-TEMP-9197 (hereinafter, the car) and tractor make HMT colour blue, HR-20K-2724 (hereinafter, the truck). The truck is stated to be owned by Satbir and Surender, sons of Ram Sarup, who were brought before the Motor Accident Claims Tribunal (Tribunal) as second respondents, it having been driven at the relevant point of time by Ram Singh and being insured against third party risk for the relevant period with Oriental Insurance Company Limited, each of whom were impleaded as first and third respondent respectively in the claim petitions, the said insurance

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company being now the appellant in MAC APP.896/2016, 902/2016 and 903/2016 (hereinafter as the insurer).

2. Three persons were travelling in the car including Rahul Yadav and Nitin Yadav; 25 years and 23 years old persons, who died as a result of the injuries suffered in the accident, another being Rajbir Yadav, 26 years old, the latter suffering injuries in the process.

3. A police case was registered vide First Information Report (FIR) No.91/2012 with the local police, in the wake of which a Detailed Accident Report (DAR) came to be submitted. In the wake of DAR, three claim petitions came before the court, they being MACP case Nos.599/2012/2014, 600/2012/2014 and 601/2012/2014. The first of the said claim petition was instituted by Rajbir Yadav for compensation for injuries suffered by him, the other two having been instituted by the legal heirs/dependents of the deceased Nitin Yadav and Rahul Yadav respectively.

4. The Tribunal had inquiry by consolidating all the three cases. Common evidence was led. The claim petitions were decided by common judgment rendered on 04.07.2016. In all the three cases, the question of negligence was considered and, on the basis of the evidence led, the Tribunal recorded finding that the collision took place due to negligence on the part of the tractor driver.

5. For the injuries suffered by Rajbir Yadav on his claim petition compensation of Rs.79,480/- was awarded. In the case of claim on account of death of Nitin Yadav, a bachelor, the claim having been

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presented by his parents and minor sister, compensation of Rs.27,73,000/- was awarded while in the case of claim on account of death of Rahul Yadav, it having been presented by his widow, minor son and widowed mother, compensation of Rs.16,03,032/- was awarded. In all the three cases, the Tribunal added the element of interest @ 10% per annum from the date of filing of the petitions, *i.e.*, 10.07.2012, fastening the liability on the insurer.

6. The insurance company by its three appeals has questioned the correctness of the finding recorded on the issue of negligence, its contention being that Rahul Yadav, the driver of the car, had also contributed to the cause of accident. The insurance company also assails the calculations of compensation in the two death cases and takes exception to the levy of interest @ 10% per annum.

7. The claimants in the two death cases have also come up with their respective appeals, the appeal on behalf of legal heirs of Rahul Yadav being MAC APP.266/2017 and the appeal in case of death of Nitin Yadav being MAC APP.271/2017, each claiming enhanced compensation.

8. Arguments have been heard at length and the record has been perused.

ON NEGLIGENCE

9. The submission of the insurer on the issue of negligence is devoid of substance. The evidence of Rajbir Yadav (PW-3), the surviving passenger in the car itself is sufficient to nail the

responsibility at the door of the tractor driver. The evidence, supported by the corresponding police record, clearly shows that the tractor was wrongly parked on the wrong side without any caution sign. It was primarily on this count that the car came to strike against it sometime after midnight. Neither the insurer nor the tractor owner or driver made any attempt to bring any evidence to prove facts to the contrary. The said finding, therefore, does not call for any interference.

COMPENSATION IN CASE OF DEATH OF RAHUL YADAV

10. Deceased Rahul Yadav was 25 years old and had completed secondary school examination. As per the evidence of his wife (PW-1), he had been in a private service as CCTV operator earning Rs.9,000/- per month. She sought to prove this fact on the basis of salary certificate Ex.PW-1/8. This, however, could not have been accepted and was rightly rejected as no formal proof about such engagement was brought in. The evidence was also led by the testimony of PW-4 to the effect that Rahul Yadav was son of a former employee of Delhi Police who had died during service, Rahul Yadav's candidature for appointment on compassionate grounds having been accepted and he being offered appointment but, subject to medical fitness. Before he could undergo medical examination or take up such appointment, unfortunately, he died in the accident. In these circumstances, the Tribunal did not accept the plea of the claimants that the earnings of Rahul Yadav on which loss of dependency had to be worked out should be assumed on the basis of what would have

been his income if he had joined service of Delhi Police. The Tribunal instead went by minimum wages.

11. The claimants reiterate their arguments that the loss of dependency had to be worked out assuming the salary that Rahul Yadav would have drawn if he had joined the police services.

12. Having accorded serious consideration to the above aspect, this court is unable to accept the contention of the claimants. It is the actual loss of dependency which has to be compensated. The future income on the basis of such candidature or aspiration for government service as mentioned above is in the realm of speculation. It was contingent upon further test as to fitness to be undergone. Therefore, such income cannot be treated as the income of which there has been a loss. The approach of the Tribunal in this regard cannot be faulted.

13. In above view, the compensation awarded by the Tribunal does not call for any modification.

COMPENSATION IN CASE OF DEATH OF NITIN YADAV

14. The deceased Nitin Yadav was a bachelor, the claim having been brought by his parents and minor sister. The minor sister is primarily dependant on her father. It cannot at the same time be denied that she would have also looked upto her elder brother for some sustenance. But this does not mean the choice of multiplier had to be on the basis of the age of the deceased. The prime dependents whose loss requires to be compensated being the parents, the multiplier should have been chosen on the basis of the age of the mother. She

being 49 years old at the relevant point of time, the multiplier of 18 adopted for calculation will have to be suitably amended. Thus, loss of dependency is to be worked out on the multiplier of 13.

15. The Tribunal found on the basis of evidence the monthly salary of the deceased to be Rs.17,000/-. Deducting one-third towards personal and living expenses, the loss of dependency comes to (17,000/- x 2 ÷ 3 x 12 x 13) Rs.17,67,999.99 rounded off to Rs.17,68,000/-.

16. This court agrees with the submission of the insurer that in case of a bachelor the addition of Rs.1,00,000/- under the head of loss of consortium was uncalled for. The said award will have to be vacated.

17. Thus, the total compensation in the case of death of Nitin Yadav works out to (17,68,000/- + 25,000/- + 1,00,000/- + 1,00,000/-) Rs.19,93,000/-.

18. The compensation in the case of death of Nitin Yadav is modified accordingly.

INTEREST

19. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*], the rate of interest levied in all the three cases is reduced to 9% per annum from the date of filing of the respective petitions.

DIRECTIONS

20. In the three appeals filed by the insurance company, by similar orders passed on 26.10.2016, it was directed that the insurance company would pay 50% of the awarded amount with upto date interest @ 9% per annum with UCO Bank, Delhi High Court Branch and upon such deposit being made the amounts were to be kept in fixed deposits. The Registrar General shall take necessary steps to ensure that the said amounts kept in fixed deposits are released to the respective claimants.

21. The insurance company is directed to deposit the balance amounts in terms of the above directions in each case with the Tribunal within thirty days of today.

22. The statutory deposits, if made, shall also be released to the insurance company.

23. All the five appeals stand disposed of with these directions.

R.K.GAUBA, J.

JULY 05, 2017
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