$~4

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

Decided on: 08th September, 2017

\+ MAC.APP. 785/2015 and CM 23499/2015 and 30347/2016

UNITED INDIA INSURANCE COMPANY LTD .... Appellant

Through: Mr. Praveen Sehrawat and Mr. Abhishek Kumar, Advocates

versus

MANJEET & ORS .... Respondents

Through: Mr. Arun Srivastava, Advocate

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

JUDGMENT (ORAL)

1. On account of the death of Prem Pal Shama @ Prem Pal, aged over 60 years, in a motor vehicular accident that took place on 26.07.2013 due to the negligent driving of a tanker bearing registration no.DL-1GB-6506, concededly insured against third party risk with the appellant / insurance company (insurer), the Motor Accident Claims Tribunal (Tribunal), by its judgment dated 11.08.2015 on claim petition (MACT no.331/DAR/14) of the first to fifth respondents (collectively, the claimants), has directed the insurance company to pay compensation in the total sum of Rs.28,78,216/- with interest at the rate of 9% p.a. The insurance company questions the said direction on various grounds.

2. Having heard the learned counsel for the insurer and for the claimants, this court finds a number of errors committed by the tribunal in the impugned judgment including in the mathematical calculation of the awards it granted under various heads, they being computed by it in para 17 in the total sum of Rs.27,46,399/- but curiously for in-explicable reasons leading to directions in para 23 for the aforesaid amount to be paid. The Tribunal has discussed the evidence about the income thus :-

> *"11. PW-2 Sh. Subhash Kathura, Manager, General Administration, AR of Sant Nirankari Mandal, Registered Delhi has come in the witness box and stated that Prem Pal Sharma @ Prem Pal was working in their dispensary in morning shift as part time doctor from 9.00 a.m. to 2.00 p.m. and was receiving a salary of Rs.4,000/- p.m. as Ex. PW2/2. He has also proved the vouchers for payments to Prem Pal Sharma @ Prem Pal for the month of May, June, August, 2013 showing that he was getting salary of Rs.4,000/- per month as Ex. PW2/3 (colly), income and expenses vouchers of Matiyala Branch with is Ex. PW2/4 (colly), Certificate from Sh. Indernath Sharma certifying that the deceased Prem Pal Sharma @ Prem Pal was receiving a maintenance allowance of Rs.14,774/- per month and also certifying therein that the deceased was doing Sewa in the dispensary since 01.06.1996 as Ex. PW2/5, Human Resources Department 2013-2014 Maintenance Allowance paid to Sewa Das for the month of June, 2013 which are Ex. PW2/6 (colly) in which name of Prem Pal Sharma @ Prem Pal is mentioned at point 9. He further stated that deceased Prem Pal Sharma @ Prem Pal was Ayurvedic Doctor. Therefore, his annual income comes to Rs.22,774 x 12 = Rs.2,73,288/- (Rs. Two Lacs, seventy three thousand, two hundred and eighty eight only) per annum."*

3. The learned counsel for the claimants fairly concedes that the amount of Rs.4,000/- mentioned twice in the above discussion has been taken into consideration giving double advantage. He at the same time fairly conceded that the income of Rs.14,774/- was the only amount which was duly authenticated by the record of payment made by Human Resources Department of Sant Nirankari Mandal (Ex. PW2/6). He, thus, conceded that the loss of dependency may be calculated taking Rs.14,774/- as the monthly earnings.

4. Adding the element of 15% of future prospects, as rightly factored in, keeping in view the age of the deceased, deducting one-fourth towards personal and living expenses, and applying the multiplier of 9, the loss of dependency is re-computed as (Rs.14,774/- x 115/100 x 3/4 x 12 x 9) Rs.13,76,198/-, rounded off to Rs.13,77,000/-. (Rupees Thirteen Lakhs seventy seven thousand only)

5. The tribunal awarded Rs.4,00,000/- towards loss of love and affection, Rs.1,00,000/- each towards loss to estate and loss of consortium and Rs.25,000/- towards funeral expenses. This is not in *sync* with the dispensation in similarly placed cases by this court. Having regard to the date of the accident, and following the view taken in *Shriram General Insurance Co Ltd v. Usha, MAC.APP.No.160/2015*, decided on 05.05.2016, amount of Rs.1,50,000/- each towards loss of love and affection and loss of consortium and Rs.50,000/- each towards funeral expenses and loss to estate are added.

6. Thus, the total compensation in the case is worked out as [Rs.13,77,000/- + Rs.1,50,000/- +Rs.1,50,000/- + Rs.50,000/- +

Rs.50,000/-] Rs.17,77,000/- (Rupees Seventeen Lakh and seventy seven thousand only). The award is modified accordingly. The rate of interest (9%) (nine percent) levied by the tribunal being in accord with the consistent view taken by this court and so the same is not disturbed. [see judgment dated 22.02.2016 in *MAC.APP. 165/2011*, *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.]

7. By order dated 14.10.2015, the insurance company had been directed to deposit the amount of compensation (Rs.27,46,399/-) mentioned in para 17 of the impugned judgment with the Registrar General of this court and out of such deposit, 50% (fifty percent) was allowed to be released to the claimants, the balance kept in fixed deposit. Since the tribunal had specified the amounts falling to the share of different claimants, it is directed that the amounts already received by the claimants other than the widow (first respondent) shall be treated as their share, the entire balance now payable to the share of the first respondent / widow only. The Registry shall calculate the balance payable to the first respondent / widow in terms of the award modified as above, refunding the excess, if any, to the insurance company.

8. The statutory amount shall be refunded.

9. The appeal and the pending applications are disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 08, 2017
yg