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

Date of Decision: October 15, 2018

\+   **MAC.APP. 432/2016**

THE ORIENTAL INSURANCE CO LTD ..... Appellant
Through: Mr. Pankaj Seth, Advocate

Versus

KIRAN ALEXANDER & ORS. .....Respondents
Through: Nemo.

\+   **MAC.APP. 440/2016**

THE ORIENTAL INSURANCE CO LTD .....Appellant
Through: Mr. Pankaj Seth, Advocate

Versus

HEMLATA ALEXANDER & ORS. .....Respondents
Through: Nemo.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned two appeals arise out of separate Awards of even date i.e. 2nd February, 2016, vide which the Motor Accident Claims Tribunal *(henceforth referred to as the "Tribunal")* has awarded compensation of ₹28,57,000/- with interest @ 9% p.a. to legal heirs of a Nursing Orderly - *Rajesh,* aged about 40 years, in a vehicular accident

which took place on 11th June, 2015.

2. In this unfortunate accident in question, *Kiran*-mother of deceased-Rajesh, aged 68 years had sustained injuries and the Tribunal vide award of even date has granted lump-sum compensation of ₹12,000/- with interest @ 9% p.a. to *Kiran (henceforth referred to as the "Injured")*, which is under challenge in the above captioned first appeal.

3. In the above captioned appeals, appellant –*The Oriental Insurance Company Limited (henceforth referred to as the "Insurer")* assails the impugned Awards on the ground that quantum of compensation granted by the Tribunal to Injured-*Kiran* and legal heirs of deceased-*Rajesh* is exorbitant. Impugned Award is also challenged by the Insurer on the aspect of liability to pay the compensation awarded.

4. Despite service, there is no representation on behalf of respondents, who are the owner and driver of insured vehicle in question and the Claimants i.e. Injured and legal heirs of deceased. Since these two appeals arise out of one vehicular accident, therefore, these appeals have been heard together and are being decided by this common judgment.

5. The factual background of this case, as noticed in the impugned Award, is as under:-

> *"It is the case of petitioners that on 11th June, 2015 at about 4.25 a.m. the deceased Shri Rajesh Kumar, S/o Late Shri U.Alexander was going to his residence at Sector-3, Dwarka, New Delhi from the side of Delhi Cantt. driving Wagon R car bearing registration No.DL-2CV-8541 accompanied by his mother namely Mrs. Kiran Alexander i.e. the petitioner sitting on the co-driver seat thereof, at a normal speed at his correct side observing proper lookouts. When he reached before Palam Flyover, Delhi Cantt. in the meanwhile a Mahindra Tractor connected with a water tanker bearing registration No. DL-*

1E-1802 being driven by its driver/ respondent No.1 at an exorbitantly high speed in a most rash, reckless and negligent manner without observing proper lookouts, without blowing any horn in contravention of traffic rules and regulations being laid down by Delhi Traffic Police came from behind and overtook the WagonR being driven by the deceased from the right hand side and swerved it towards the divider of the road, consequently the WagonR being driven by the deceased struck against the offending tractor, resultantly the deceased had sustained fatal head injuries. He was shortly removed to nearby Deen Dyal Upadhyay Hospital, Hari Nagar, New Delhi where he was admitted vide MLC NO.5003 dated 11.06.2015 and was declared to have been brought dead and could not be saved inspite of the tireless efforts made by the treating doctors. The petitioner was also admitted there vide MLC No.4980 dated 11.06.2015 of DDU Hosptial, Hari Nagar, Delhi and was discharged after administering the requisite First Aid Treatment."

6. To render the impugned Award, the Tribunal has relied upon evidence of widow-*Hemlata Alexender (PW-1)* and Injured- *Kiran Alexender (PW-2)* and other evidence on record. The Tribunal has awarded lump-sum compensation of ₹12,000/- to Injured-*Kiran*. In the case of deceased-*Rajesh,* to assess his *"loss of dependency"*, the Tribunal has calculated his income on the basis of Salary Slip *(Ex.PW3/A colly)* and has made addition of 30% towards *'future prospects'* and multiplier of 15 has been applied. Deduction of 1/4th towards *"personal expenses"* has been also made. The Tribunal has held that negligence of driver of the insured vehicle is 75% and of the vehicle driven by deceased is 25%.

7. The breakup of compensation awarded by the Tribunal to legal heirs of deceased-*Rajesh* is as under:-

1.	Loss of dependency	₹26,22,000/-
2.	Love and affection	₹1,00,000/-
3.	Loss of consortium	₹1,00,000/-

4.	Loss of estate	₹10,000/-
5.	Funeral expenses	₹25,000/-
	Total	₹28,57,000**/-**

8. The challenge to the impugned Award by counsel for Insurer is on the ground that the Tribunal has erred in granting lump-sum compensation to Injured, though the injury sustained by her was simple in nature and so, compensation awarded to Injured needs to be suitably reduced.

9. It is next submitted by counsel for Insurer that that the Tribunal has also erred in holding driver of the insured vehicle to be negligent to the extent of 75%. It is submitted that the negligence of the insured vehicle at best can be taken to be 50%. On the quantum aspect, it is submitted that the income of deceased has been calculated on the basis of Salary Slip *(Ex. PW3/A Colly.)* on record, without deducting the tax payable. It is further submitted by counsel for Insurer that the compensation granted under the non-pecuniary heads is required to be brought in tune with Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680. It is also submitted that grant of penal interest of 12% by the Tribunal is unwarranted.

10. On the liability aspect, counsel for Insurer submits that appellant had insured the truck and not the trolly attached to it. It is submitted that evidence of appellant's witness- *Pallavi* (R3W1) remains unchallenged , as driver and owner of the truck in question had not cross-examined this witness *(R3W1)* and so, recovery rights ought to be granted to appellant against owner and driver of the insured vehicle i.e. the truck. It is further

submitted that the tractor in question was insured for agricultural and forestry purpose but it was being used on road for watering plants.

11. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that the version of Injured *(PW-2)* reveals that the insured vehicle i.e. the truck had overtaken the car of deceased from right side and had suddenly stopped in front of the car of deceased, which had caused the accident in question. The driver of insured vehicle has not come forward to set up a contrary version. There is nothing in the cross-examination of Injured-eyewitness which could demolish the version put-forth in her evidence. In the considered opinion of this Court, the Tribunal has rightly concluded that the negligence of driver of the insured vehicle was 75%.

12. In view of Salary Slip *(Ex.PW3/A colly)* of deceased, this Court finds that no tax was liable to be deducted, as income of deceased was not taxable and so, on this account the impugned Award cannot be faulted with. The compensation granted by the Tribunal under the non-pecuniary heads to legal heirs of deceased-*Rajesh* needs to be brought in tune with Supreme Court's Constitution Bench decision in *Pranay Sethi (supra).* Accordingly, compensation granted by the Tribunal under the head of *'loss of love & affection'* is *disallowed. "Funeral expenses"* are reduced from ₹25,000/- to ₹15,000/- and compensation under the head of *"loss of consortium"* is also reduced from ₹1,00,000/- to ₹40,000/-. However, compensation granted under the head *"loss of estate"* is increased from ₹10,000/- to ₹15,000/-.

13. In light of the aforesaid, the compensation payable to legal heirs of

deceased – *Rajesh* is re-assessed as under:-

1.	Loss of dependency	₹26,22,000/-
2.	Loss of consortium	₹40,000/-
4.	Loss of estate	₹15,000/-
5.	Funeral expenses	₹15,000/-
	Total	₹26,92,000**/-**

14. On the liability aspect, I find that in terms of insurance policy, the insured vehicle i.e. the tractor in question was to be used for forestry purposes. Infact, it was being used for watering plants, which is a forestry purpose. As per the insurance policy of the insured vehicle on record, it could be used with one trolly. There is nothing on record to show that a separate insurance cover is required for a trolley to be used with the insured tractor. In the considered opinion of this Court, there is no conscious breach of terms of insurance policy and so, the liability to pay the awarded compensation is of the appellant.

15. As regards, lump-sum compensation of ₹12,000/- granted by the Tribunal to Injured-*Kiran* is concerned, I find that as per MLC of Injured, she had sustained injuries in this accident. Though the Injured had deposed before the Tribunal but not in respect of the injuries sustained by her. Considering the fact that the Injured had sustained lacerated wounds and had sustained injuries on right knee etc. and she was advised voveran injection and other medication, I find that lump-sum compensation of ₹12,000/- granted to her is justified.

16. In light of the aforesaid, the compensation granted to legal heirs of deceased-*Rajesh* is reduced from ₹28,57,000/- to ₹26,92,000/-. However, the compensation granted to Injured-*Kiran* is maintained. The grant of

penal interest of 12% by the Tribunal is waived. The modified compensation shall carry interest @ 9% per annum. It be released forthwith to legal heirs of deceased- *Rajesh* and Injured-*Kiran* in the manner as indicated in the impugned Award. Statutory deposit and the excess deposit, if any, be refunded to Insurer.

17. While modifying the impugned Awards in the aforesaid terms, the above captioned two appeals are accordingly disposed of.

(SUNIL GAUR)
JUDGE

OCTOBER 15, 2018
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