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

Date of Decision: February 02, 2018

\+ MAC.APP. 1011/2015 & C.M. 32164/2015

ORIENTAL INSURANCE CO LTD. ..... Appellant
Through: Mr. L.K. Tyagi, Advocate

Versus

RAM ROOP & ORS. ..... Respondents
Through: Mr. S.N.Prashar, Advocate for claimants

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 12th October, 2015 grants compensation of ₹7,17,300/- with interest @ 9% p.a. to respondents-claimants on death of one- *Krishan Kumar* , son of *Ram Roop*, aged 20 years, who had died in a vehicular accident on 16th January, 2008 while he was driving motor cycle of third respondent herein. The factual position of this case stands already noted in the impugned Award and so, needs no reproduction.

2. Suffice to note that apart from evidence of *Ram Roop*, father of deceased (PW-1/A) and eye witness *Sunil Kumar (PW-1)*, there is evidence of *Nagendera Paswan (R2W1)*, from the office of Regional Transport Authority (RTA), who has proved the driving license of deceased. While relying upon the evidence of aforesaid witnesses, learned Motor Accident Claims Tribunal *(henceforth referred to as "the*

Tribunal") has assessed the income of deceased on minimum wages and added 50% towards future prospects and after deducting 1/3rd towards personal expenses and applying multiplier of 18, the loss of dependency has been assessed at ₹7,12,800/-. Learned Tribunal has also granted ₹2,000/- towards *funeral expenses* and ₹2,500/- towards *loss of estate.*

3. The challenge to the impugned Award by learned counsel for appellant-insurer is on the ground that the deceased was neither the owner nor the driver of vehicle in question and so, insurance company is not liable to compensate respondent-claimants. It is submitted that as per evidence on record, the deceased was merely an employee of third respondent and he had borrowed the vehicle from the owner and so, the liability to pay compensation is of the owner and not of the insurer. To submit so, reliance is placed upon Supreme Court's decisions in *Ningamma & Anr. Vs. United India Insurance Co. Ltd.* (2009) 13 SCC 710 and *Sanjeev Kumar Samrat Vs. National Insurance Company Limited & ORs.* (2014) 14 SCC 243. Learned counsel for appellant-Insurer submits that addition of 50% towards *future prospects* is unwarranted, as the compensation has been assessed in the instant case in a petition under Section 163A of the *Motor Vehicles Act, 1988.*

4. Third respondent, who is the owner of vehicle in question, has been served by way of publication but none appears on behalf of third respondent.

5. Learned counsel for respondents-claimants concedes the legal position that in a petition under Section 163A of the *Motor Vehicles Act*, 1988 addition of 50% towards future prospects cannot be granted but

submits that deceased was an employee of third respondent and so, appellant-insurer is liable to pay the awarded compensation.

6. Upon hearing and on perusal of impugned Award, material on record and the decisions cited, I find that Supreme Court in *Ningamma* and *Sanjeev Kumar (Supra)* has reiterated that liability of insurer to pay compensation is only towards third party and not where the driver steps into the shoes of owner of the vehicle in question. In light of above referred dictum of Supreme Court in *Ningamma* and *Sanjeev Kumar (Supra)*, impugned Award on the liability aspect is accordingly modified and it is held that liability to pay the awarded amount is of respondent-owner and not of appellant-Insurer. In the facts and circumstances of this case, appellant-insurer is granted recovery rights against third respondent. It is settled legal position that in a petition under Section 163A of the *Motor Vehicles Act*, future prospects cannot be granted and so the impugned Award is accordingly modified. The *loss of dependency* is now reassessed as:-

₹3300- 1/ 3^{rd} = ₹2,200 X 12 X 18 = ₹4,75,200/-

7. So far compensation under the non-pecuniary heads is concerned, I find that in view of Supreme Court's decisions in *Ningamma* and *Sanjeev Kumar (Supra)*, compensation payable under the non-pecuniary heads is ₹2,000/- towards *funeral expenses* and ₹2,500/- towards *loss of estate*, as granted by the learned Tribunal and thus the compensation assessed is ₹4,79,700/-.

8. The impugned award is accordingly modified by reducing the total compensation from ₹7,17,300/- to ₹4,79,700/-, which shall carry interest @ 9% p.a., as awarded by the learned Tribunal. This Court is informed

that in terms of order of 7th January, 2016, the awarded amount stands deposited with the Registry of this Court, which has been invested in fixed deposit receipt. Vide order of 8th August, 2016, this Court had directed release of interest accrued upon the fixed deposit receipt to respondents No.1 & 2- claimants in equal shares. Registry is directed to release the amount payable to respondent-claimants in terms of this judgment and refund the excess amount to appellant- Insurance Company, if any. Statutory deposit, if any, be refunded to appellant as per rules.

9. With aforesaid directions, this appeal and the pending application are disposed of.

SUNIL GAUR
(JUDGE)

FEBRUARY 02, 2018
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