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

% *Decided on: 24.10.2019*

+ **MAC.APP. 29/2018**

THE ORIENTAL INSURANCE CO LTD Appellant

Through: Mr. S.P. Jain, Advocate.

versus

SARITA DEVI & ORS Respondents

Through: Mr. S.N. Parashar, Advocate for R-1
& R-2.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 01.11.2017 passed by the learned MACT in MACP No. 5540/16 (Old MACP No. 233/15), on the ground that the computation of the pecuniary loss includes certain emoluments in the salary of the deceased, such as 'Metro Allowances' that ought to have been deducted while computing the compensation payable under such head.

2. The appellant contends that the allowance towards 'transport and conveyance' and 'washing allowance' too, were personal to the officer and benefit of such allowance could not be considered to extend to the kin of the deceased. The said argument is untenable because each of the allowances could have been used by his family jointly. Only the amount towards 'Metro

Allowance' that is specific to the officer shall be deducted from the amount of compensation payable.

3. It is also argued that the deceased was negligent to some extent, therefore, some amount of contributory negligence should be attributed to him and deductions from the compensation awarded, should be made in this regard.

4. A Site Plan prepared by the police has been annexed in the LCR (at pg. 133). It did not depict the manner in which the accident happened i.e. the nature of the accident in which the offending vehicle is stated to have collided with the motor cycle of the deceased-rider. The Mechanical Inspection Report dated 28.03.2015, apropos the bus bearing No. DL-1PC-4930, showed that it had fresh damages on its front head light on the driver's side; dent on its front side of driver's side and damage on its front bumper towards driver's side. Apropos the victim's motorcycle bearing No. DL9S-AK-9388, the report notes fresh damages i.e. its right side steering was found damaged; its front wheel brake, its right side leg guard and its right side gear box cover were all found damaged.

5. The learned counsel submits that this issue has been discussed in the impugned order, as under:-

“10. Respondent no. 1 i.e. driver of the bus, has been examined by insurance company as R3W1. In his evidence, he deposed that on 27.03.15, he was going from Delhi to Rohtak. When he crossed Toll Tax, one bike suddenly came from left side of the road and hit against his vehicle from back left side. He was going on his correct side of the road. During his cross-examination on behalf of petitioners, he admitted that FIR No.

135/15 U/s. 279/304A IPC was registered against him at PS. Sadar Bahadurgarh with regard to accident in question. He explained that said criminal case was still pending trial before concerned court at Bahadurgarh. He did not file any complaint either with superior police authorities or with any other government agency to the effect that he had been falsely implicated in the aforesaid criminal case. He admitted that he was arrested by the police in the said case. However, he denied the suggestion that accident occurred due to his rash and negligent driving of the vehicle or that deceased was driving his motorcycle at normal speed or that deceased was on correct side of the road.

14. Mechanical inspection report dated 28.03.15 (which is part of criminal record Ex. P-1 colly) of Bus No. DL-IPC-4930, would show fresh damages on its front head light of driver side; dent on its front side of driver side and damage on its front bumper towards driver side. Likewise, the copy of mechanical inspection report dated 28.03.15 of motorcycle no. DL9S-AK-9388 of the victim, would show fresh damages i.e. its right side steering found damaged; its front wheel brake damaged; its right side leg guard damaged and its right side gear box cover was found damaged. Said documents have not been disputed by either of the respondents and corroborate the ocular testimony of PW2 to the extent that the bus had hit the motorcycle of the victim from the back side.”

6. However, the Court would note that the Mechanical Inspection Report shows damage to the bus on the driver's side; if it had hit the motorcycle from behind, the point of impact on a motor vehicle ought to have been reflected in the said Report. The motorcycle had damaged on its right side. When a lighter vehicle like a motorcycle is nudged even slightly from behind, it can lose its balance and can topple over or cartwheel to the

grievous detriment to rider and extensive damage to the motor vehicle. In the present case the impact to the motorcycle from the driver's side of the bus would be sufficient to crash the motor-cyclist into the road divider. The Site Plan shows that the accident had happened abutting the road divider. The damage to the bus is from the front side. There is no record of any damage to the bus from the right rear portion, corresponding to the appellant's theory that the motor-cyclist had dashed into the bus from the rear side. Therefore, the only conclusion that could be drawn would be that the bus hit the motor-cyclist who possibly crashed and fell on his right side, leading to the fatality.

7. Therefore, let the 'Metro Allowance' be deducted from the salary of the deceased. The remaining amount, alongwith interest @9% p.a. from the date of filing of the Claim Petition till its realization, shall be deposited before the learned Tribunal to be released to the beneficiary(ies) of the Award in terms of the scheme of disbursement specified therein. Let the insurance company furnish a fresh computation to the claimants of the compensation payable.

8. It is submitted by the learned counsel for the appellant that the awarded amount has been deposited by the appellant before the learned Tribunal. Excess amounts apropos the metro allowance in terms of the computation as may be furnished by the appellant to the learned Tribunal shall be returned to it alongwith interest accrued thereon.

9. The statutory amount, alongwith interest accrued thereon, be refunded to the appellant.

10. The appeal is allowed and disposed-off in the above terms.

NAJMI WAZIRI, J

OCTOBER 24, 2019/RW

