$~44 to 47 & 51

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

% *Decided on: 08.08.2019*

\+ MAC.APP. 1034/2018 & CM APPL. 48754/2018
ORIENTAL INSURANCE CO LTD ..... Appellant
Versus
DEV KARAN & ORS ..... Respondents

\+ MAC.APP. 1035/2018 & CM APPL. 48789/2018
ORIENTAL INSURANCE CO LTD ..... Appellant
Versus
MALA DEVI & ORS ..... Respondents

\+ MAC.APP. 1037/2018 & CM APPL. 48799/2018
ORIENTAL INSURANCE CO LTD ..... Appellant
Versus
NATHI RAM & ORS ..... Respondents

\+ MAC.APP. 1039/2018, CM APPL. 48804/2018 & CM APPL. 48805/2018
ORIENTAL INSURANCE CO LTD ..... Appellant
Versus
LAL CHAND JHA & ORS ..... Respondents

\+ MAC.APP. 641/2019 & CM APPL. 28921/2019
ORIENTAL INSURANCE CO LTD ..... Appellant
Versus
SUDAMA BHAGAT & ORS ..... Respondents

Through: Mr. R.K. Tripathi, Advocate for Appellant.
Mr. Arun Sharma, Advocate for R-1 & 2 in Item no. 44.
Mr. Jatinder Kamra, Advocate for R-1 to R-3 in Item no. 45.
Mr. Vinay Tomar, Advocate for R-1 & 2 in Item No. 46.
Mr. Jatinder Kamra, Advocate For R-1 & 2 in Item no. 47.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The award of compensation passed by the learned MACT has been impugned on the ground that the Notification dated 22.05.2018, enhancing the scheduled amount of compensation for a fatality, is applicable from the date of the Notification and not retrospectively. It is contended that since the accident occurred prior to the date of the aforesaid Notification, the earlier rates would be applicable.

2. This Court has already dealt with the aforementioned issue, in an earlier case i.e. ***HDFC Ergo General Insurance Co Ltd vs. Rihana & Ors***. MAC. APP. No. 589/2019, decided on 26.07.2019, *inter alia*, as under:-

> *" The Court, however, would refer to the dicta of the Supreme Court in* ***Union of India vs. Rina Devi (2019) 3 SCC 572****, wherein it was held that if on the date of the decision of the claim petition, the awarded amount was less than the earlier notified amount, alongwith interest accrued thereon, then the duly notified amount shall be payable. However, if the amount awarded earlier was more than the notified amount, then the larger amount would be payable...."*

3. In other words, the minimum amounts that would be payable by the insurance company would be Rs. 5,00,000/-. However, if the award computed on the basis of the pre-revised note alongwith interest thereon is higher, then the higher amount shall be payable.

4. Let the insurance company compute the award in terms of the above within four weeks from today and deposit the money, alongwith interest accrued thereon, before the learned Tribunal within the same period of time, for disbursement to the beneficiaries of the Award in terms of the scheme of disbursement specified therein.

5. The learned counsel for the claimants/beneficiaries have no objection to the aforesaid directions.

<u>MAC.APP. 1035/2018</u>

6. The learned counsel for the appellant seeks right of recovery of the compensation amount from the owner/driver of the insured vehicle.

7. The owner/driver of the vehicle i.e. Chote Lal passed away in an unfortunate accident.

8. The learned Trial Court has dealt with the issue as under:-

> *"19. No doubt R2W1 in his examination in chief testified that wife of deceased Chote Lal failed to produce the driving licence despite sending a notice under Order XII Rule 8 CPC, but during inquiry insurance company failed to produce any cogent evidence to prove that deceased Chote Lal was not holding a valid driving licence at the time of accident, indisputably, police had not only registered the FIR but also*

filed a final report as untraced but in the said report it is nowhere mentioned that Chote Lal was not holding a driving licence at the time of accident. Admittedly, during inquiry, Chote Lal also died, thus mere fact that the wife of Chote Lal failed to produce the driving licence is not sufficient to hold that Chote Lal was not holding a valid driving licence at the time of accident. Since the insurance company failed to produce any cogent evidence, I am of the view that insurance company failed to establish that there was any wilful breach of any term and condition of the insurance policy on the part of Chote Lal."

9. Evidently, the widow and the minor children knew nothing about Chote Lal's motorcycle or his license. In the circumstances, the right of recovery cannot be granted against them.

10. The statutory amount of Rs.25,000/-, alongwith interest accrued thereon, be returned to the appellant.

11. All the five appeals are disposed-off in the above terms.

NAJMI WAZIRI, J.

AUGUST 08, 2019
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