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

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Decided on: 12.12.2019

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MAC.APP. 779/2018

M/S THE UNITED INDIA INSURANCE CO LTD Appellant

Through: Mr. D.D. Singh and Mr. Navdeep
Singh, Advocates.

versus

DINCY DEVASSY & ORS

..... Respondents

Through: Mr. Siddhant Sharma and Ms. Anu
Mehta, Advocates for R-1.
Mr. S.N. Parashar, Advocate for R-2
& R-3.
Ms. Hetu Arora Sethi, Additional
Standing Counsel (GNCTD).

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

**MAC.APP. 779/2018, CM APPL. 35617/2018, CM APPL. 44418/2018 &
CM APPL. 46040/2018**

1. This appeal impugns the award of compensation dated 05.06.2018, passed by the learned MACT in Case No. 357310-16, on the ground that the multiplier of 17 had been wrongly applied by the learned Tribunal.
2. The Court would note that in terms of the dicta of the Supreme Court in *Sarla Verma vs. Delhi Transport Corporation*, (2009) 6 SCC 121, the multiplier of 16 would be applicable only to a person who falls in the age bracket of 31 to 35 years. The deceased was over 30 years, but had not yet

attained the age of 31 years, therefore, the lesser multiplier i.e. 16 would not be applicable. The appellant's contention is untenable and is rejected.

3. The appellant further contends that the flexible allowance which comprises medical allowance, leave travel allowance, recommendation for his services, company lease accommodation and telephone allowance, etc., was not fixed, therefore, the amount of Rs. 23,272/- on these account heads could not be taken as a regular component for computation of 'loss of dependency'. However, the appellant does not explain the component of medical allowance from the said amount, which it wants to be deducted. It is also not shown whether the same is a fixed monthly amount. In the absence of anything to the contrary, that the claimants were dependent on said amount, the appellant's contention is baseless that the deceased was entitled to the allowances, which would enure to his benefit and to the benefit of his family too. Had he been alive, these benefits would have been available to the claimants. In the circumstances, there is no reason to exclude the said amounts.

4. The appellant next contends that the father was not dependent upon the deceased. The said contention is untenable because the father had clearly deposed apropos his dependency. He had denied the insurer's suggestion that none of the family members was dependent upon the deceased. The father had stated that he had never worked in his entire life and was surviving on family property i.e. agricultural land; having a monthly income from a coconut plantation which varied between Rs. 4,000/- to Rs. 5,000/-; that he had a wife and a daughter to take care of, who were earlier dependent upon the deceased. The father had further deposed that his daughter is

unmarried and about 27 years of age; she was getting a stipend from a government hospital, as she had already completed her MBBS.

5. The Court would note that a mere income of Rs. 4,000/- to Rs. 5,000/- cannot be sufficient for the father and mother aged 63 years and 59 years respectively. Apropos the father being treated as a dependent, in **Sarla Verma (supra)**, the Supreme Court held as under:

“31.....

Further, subject to evidence to the contrary, the father is likely to have his own income and will not be considered as a dependant and the mother alone will be considered as a dependant. In the absence of evidence to the contrary, brothers and sisters will not be considered as dependants, because they will either be independent and earning, or married, or be dependent on the father.”

(emphasis supplied)

6. In the present case, there are three claimants i.e. the widow of the deceased, and his parents. All three have claimed dependency. As noted hereinabove, the father's testimony that he was dependent upon his deceased son, remains unshaken. He has stated that he was dependent upon the deceased. Even otherwise, mere earning of Rs. 4,000/- to Rs. 5,000/- a month would not be sufficient for the three members of the family. In the circumstances, his dependency stands established in terms of the exception carved out in the **Sarla Verma (supra)**. The requisite evidence has been led and it is credible from the attendant circumstances of their age, etc.

7. The appellant contends that driving a vehicle on a fake licence was a fundamental breach of policy condition, therefore, the insurer cannot be held liable to indemnify any such loss. The appellant has been granted right of

recovery against the owner and driver because the driving licence was found to be fake.

8. The Court would note that in terms of the principle of 'pay and recover' laid down by the Supreme Court in various judgments, the compensation awarded would have to be paid to the beneficiaries of the Award, by the insurance company and then the same be recovered from the owner and the driver of the vehicle. Therefore, let the awarded amount as already deposited before this Court, be released to the beneficiaries of the Award, in terms of the scheme of disbursement specified therein.

9. The appeal, alongwith pending applications, is accordingly dismissed. The statutory amount, alongwith interest accrued thereon, be deposited into the 'AASRA' Fund created by this Court.

10. The Court would note that the claimants have supplied a copy of the order for plantation to the Deputy Conservator of Forests (South) [DCF (S)] and have also filed a Compliance Report in this regard. None appears on behalf of the DCF (S) nor has any Compliance Report been filed by the said officer.

11. Issue notice to the DCF (S) through Ms. Hetu Arora Sethi, the learned Additional Standing Counsel for GNCTD who accepts notice on his behalf, she assures the Court of due compliance.

12. Let the DCF (S) be present on the next date alongwith Compliance Report, with an explanation as to why the same has not been filed till date.

13. List for compliance on 17.12.2019.

NAJMI WAZIRI, J

DECEMBER 12, 2019/AB