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

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Decided on: 28.11.2019

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MAC.APP. 919/2018

THE ORIENTAL INSURANCE CO LTD Appellant

Through: Mr. Pankaj Seth, Advocate.

versus

POONAM SHARMA & ORS. Respondents

Through: Mr. Parveen Southey, Adv. for R-5
along with R-5.

Mr. Nitinjya Choudhary, Adv. for R-1
to R-4 and R-7 to R-8.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal impugns the award of compensation dated 31.07.2018 passed by the learned MACT in Suit No. 791/2004, on the ground that right of recovery has not been granted to the insurer, against the owner of the vehicle. The owner had led evidence by way of affidavit, after paying costs of Rs. 10,000/- as imposed by the learned Tribunal for the delay in filing the evidence. He had deposed that he had seen the Driving Licence of the driver, which appeared to be genuine and having tested driver's driving skills, the owner concluded that the driver possessed requisite skills to drive the vehicle. It is only thereafter, that the driver was employed. The appellant contends that in the absence any specific pleading in the reply the

owner could not lead the said evidence. In this regard, the learned Tribunal discussed as under:-

“Owner had examined himself as R2W1 before remand and had filed his affidavit Ex. R2W1/A in which he had stated that before engaging the driver, he had seen the DL of driver Raj Bahadur which appeared to be genuine to him and after after having the driving test of the driver he was found competent to drive and hence he had hired the driver for driving the vehicle.”

2. For a claim petition filed under Section 166 of the Motor Vehicles Act, 1988, an award of compensation has to be passed by the Claims Tribunal after serving due notice upon the insurer and the parties and giving them an opportunity of being heard. The nature of the proceedings are an inquiry into the claim and not a trial as envisaged in the civil and/or criminal procedure. The test for determining entitlement to compensation is preponderance of probabilities apropos the rash and negligent driving of the vehicle, resulting in the injury or fatality. Therefore, the procedure and rules of fairness have to be adopted by the learned Tribunal.

3. Section 169 of the Act gives the Claims Tribunal, the powers of a Civil Court for the purposes of taking evidence and for enforcing the attendance of witnesses and compelling the discovery and production of documents and material objects for other purposes as may be prescribed. For the purposes of Section 195 Chapter XX and XXVI of the Code of Criminal Procedure, 1973, the learned Tribunal shall be deemed to be a Civil Court and for the enforcement of the award too, it shall have all the powers of a Civil Court. For the execution of a decree under the Code of Civil Procedure, 1908, the learned Tribunal is vested with powers to pass an

award as if the award were a decree for the payment of monies as may be passed in a civil suit. In the present case, the learned Tribunal has adopted rules of fairness and has heard the parties and has granted ample opportunities to all the parties to put forth their case. Section 169 as mentioned hereinabove empowers the learned Tribunal to compel attendance of witnesses and for production of requisite records, etc. The proceedings are basically an inquiry and summary in nature. Insofar as the owner had specifically stated in his affidavit that he had seen the driving licence of the prospective driver and tested his skills, and satisfied himself of the driver's employability, it forms the basis for him to take the benefit of the principle laid down in *United India Insurance Co. Ltd. v. Lehu*, (2003) 3 SCC 338. It was open to the insurer to first cross examine him or dispute the said deposition. The insurer chose not to challenge his testimony. In the circumstances, for the learned Tribunal to have accepted the evidence of the owner with reference to *Lehu (supra)* and in not granting the right of recovery to the appellant/insurance company does not call for any interference.

4. The learned counsel for the claimant submits that in the computation of compensation towards 'loss of dependency', there is a mathematical error which shows the compensation as Rs. 11,28,500/-. It should instead be Rs. 12,28,500/-. The error is apparent. The amount towards 'loss of dependency' shall be Rs. 12,28,500/-.

5. The Court would note that there are six claimants i.e. the parents of the deceased, the widow, one son and two daughters. The parents have been arrayed as respondent Nos. 7 & 8. While the parents may or may not have

been proved to be dependant, they along with each of the claimants would be entitled to non-pecuniary compensation towards 'loss of love and affection' and 'loss of consortium' @ Rs. 50,000/- and Rs. 40,000/- respectively, in terms of dicta of the Supreme Court in *Magma General Insurance Co. Ltd. v. Nanu Ram Alias Chuhru Ram & Ors.*, 2018 SCC OnLine SC 1546. The same is awarded to them. The amount under these two heads shall be Rs. 5,40,000/-. [Rs. 50,000/- x 6 (claimants) = Rs. 3,00,000/- + Rs. 40,000/- x 6 (claimants) = Rs. 2,40,000/-]

6. Let the aforesaid amount be paid to each of the claimants, however, without interest. Interest on the heads of 'loss of love and affection' and 'loss of consortium' shall be payable @ 9% from the date of the impugned order. The other remaining amount shall be paid to the claimant in terms of the scheme of disbursement specified therein.

7. The learned counsel for the respondents submits that widow and her minor children need some monies urgently. The motor accident occurred about 22 years ago and they need some monies to tide over their financial condition.

8. In the circumstances let Rs. 3,00,000/- be released directly into the bank account of the widow-Poonam Sharma. The learned counsel for the respondents submits, upon instruction, that the children viz. Kanika Sharma (daughter), Saniya Sharma (daughter) and Raja Sharma (son) will file an affidavit to the effect that all the monies be credited into their mother's account, as she has raised them singlehandedly for more than a quarter of

the century and corresponding amounts shall be deducted from their respective shares of the compensation, as may be.

9. Let an affidavit/relinquishment deed, be filed within a period of two weeks from today, subject to the abovementioned amount of Rs. 3,00,000/- be released to their mother-Poonam Sharma, in a bank account maintained near her place of residence and not an account maintained near the office of the counsel. A cheque book shall not be issued and only Rs. 50,000/- per month shall be permitted to be withdrawn on the basis of withdrawal slip to be issued by the Manager of the Bank concerned.

10. The appeal is accordingly dismissed. Interim orders are vacated.

11. Since the appeal has been dismissed, the statutory amount alongwith interest accrued thereon, be deposited into the 'AASRA' Fund created by this Court.

12. A copy of this order be given *dasti* under the signature of the Court Master to the learned counsel for the parties.

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NAJMI WAZIRI, J

NOVEMBER 28, 2019

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