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

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Decided on: 18.07.2019

+ **MAC.APP. 960/2018 & CM APPL. 45214/2018 & 3148/2019**

THE ORIENTAL INSURANCE CO LTD Appellant
Through: Mr. Amit Gaur & Mr. Pradeep Gaur,
Advs.

versus

RENU & ORS Respondents
Through: Mr. S.N. Parashar, Adv. for R- 1 & 2.
Mr. Brij Kishore Ray & Mr Pradeep Kataria,
Advs. for R- 3 & 4.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. This appeal does not dispute the quantum of damages awarded to the claimants on account of the fatality suffered by their kin in a motor vehicle accident. Although the appellant seeks a right of recovery, no such prayer is made in this appeal. The claim petition had been filed against the insurance company. The appellant – insurance company was better equipped to identify the owner and driver of the offending vehicle. It could have also moved an application for impleadment of the owner and driver to establish that a case for recovery against the owner or driver was made out. Indeed, the appellant did not file any application in this regard, against the owner nor did it lead any evidence which could shake the testimony of the

claimants, that the fatality was caused on account of rash and negligent driving of the insured vehicle. Therefore, the very basis for seeking the right of recovery against the owner and driver has not set up by the appellant.

2. Mr. Parashar, the learned counsel for the claimants, refers to the dicta of a Division Bench of this Court in ***Omwati & Ors. vs Mohd. Din & Ors.*** (2001) DLT 184, which held as under:

“...11. It logically follows from this that a claimant could choose to file a claim petition against all or any one of them and it was not necessary that he should implead all joint tort-feasors as party respondents because they were only proper parties and not necessary parties. It may as well be that claimant had not set up a case of composite negligence but if there was material on record to suggest so, neither Tribunal nor Court was disabled or incompetent to record a finding in this regard. Support for this is derived from a DB judgment of High Court in [Hiraben Bhaga v. Gujarat State Road Transport Corporation and Anr.](#), 1982 ACJ (Supp.) 414, holding as under:

"It passes one's understanding as to how could a passenger's compensation be deducted on account of the contributory negligence of the driver of a vehicle, it is entirely the choice of the claimants whether to implead both the joint tort-feasors or either of them. The claimants cannot be saddled with the liability for contributory negligence of one of the joint tort-feasors, if they fail to implead him as one of the opponents, in their claim petition. It would be for the imp leaded joint tort-feasors to take proceedings to get the other joint tort-feasors imp

leaded in the claim petition, or for that matter such an imp leaded joint tort-feasors may select to sue the other one after the decree or award is given and the other joint tort-feasor if held liable therein. It would be however quite a different argument to advance that because the claimants did not sue one of the tort-feasors, they themselves should be held liable for the deduction of the amount, which the omitted joint tort-feasor would have been called upon to pay. Thus, there would be no deduction in the amount of compensation awarded to the appellants as done by the Tribunal..... ”

3. What emanates from the above is that a claimant can file a case against any of the tort-feasors. Therefore, the very ground of the appellant that the case was not maintainable on non-joinder of necessary parties is not made out. The appeal on this contention is untenable and is rejected.

4. At this stage, the learned counsel for the appellant submits that the impugned order has erred in deducting only 1/4th of the earnings towards personal expenses whereas it ought to have been 1/3rd because respondent no.1 Ms. Renu, who claims to be lawfully wedded wife of the deceased; could not be his wife, because of the subsistence of his marriage with Ms. Kanchan (R-3). There is no proof of Ms Renu (R-1) having married the deceased. In the circumstances, Ms. Renu (R-1) not being the deceased's wife will not have any claim in the apportionment of damages an amount of the demise of Kanchan's husband. Resultantly, the deduction towards personal expenses of the deceased shall be 1/3rd and not 1/4th.

5. In the Trial Court Records there is a birth certificate (Ex. PW1/5) dated 26.07.2011 showing the deceased Ram Singh and Ms. Renu (R-1), as the parents of Sarthak Bagoria (R-2). In the circumstances, irrespective of the legitimacy of the child, he would be entitled to all benefits as that to a legitimate child, in terms of the dicta of the Supreme Court in ***Revanasiddappa v. Mallikarjun*** (2011) 11 SCC 1. In view of fact that the Motor Vehicles Act, 1988 is a socially beneficial legislation, Yogesh (R-4) too would be entitled to 1/3rd share of the awarded amount because the Annual Result Card Ex. PW4/1 shows his father's name as Ram Singh. Furthermore, Ex. PW4/2 is a caste certificate issued by the office of the Deputy Commissioner (West District), Delhi on 03.05.2006, it too shows Yogesh (R-4) to be the son of Mr. Ram Singh, r/o E-141, DDA Flat, New Ranjit Nagar, New Delhi. A driving licence (Ex. PW4/3) has been issued to Yogesh – R4, under the same identity details. Similarly, a Provisional Certificate (Ex. PW4/4) has been issued to him by the National Institute of Open Schooling, showing him to be the son of Mr. Ram Singh. Lastly, an Election Card has also been issued to him under the same particulars.

6. In view of the above, the awarded amount shall be calculated afresh and the monies shall be apportioned among Ms. Kanchan (R-3), Yogesh (R-4) and Sarthak Bhagoria (R-2) equally and distributed to them in terms of the scheme of disbursement mentioned in the Award. A fresh calculation of the amounts refundable to the insurance company has been handed over to the Court as well as to the learned counsel for the respondents; the same is not disputed by the latter. The monies deposited shall be apportioned in terms of the fresh calculation and released in terms of the specified scheme

of disbursement. Excess money, if any, alongwith the corresponding interest thereon, and the statutory amount of Rs. 25,000/-, shall be returned to the appellant.

7. The appeal is disposed off in the above terms.

NAJMI WAZIRI, J.

JULY 18, 2019
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