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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of Decision: 10th December, 2024*+ **MAC.APP. 648/2024, CM APPL. 72242/2024 (stay), CM APPL. 72243/2024 (delay)**

THE ORIENTAL INSURANCE CO. LTD.Appellant

Through: Mr. Abhishek Gola and Mr. Anshul Mehral, Advocates.

versus

1. AARTI GAUTAM
W/o Late Sh. Narender Gautam (deceased)Respondent No.1
2. ARADHYA GAUTAM
D/o Late Sh. Narender Gautam (deceased)....Respondent No. 2
3. NAMAN GAUTAM
S/o Late Sh. Narender Kumar Gautam (deceased)
.....Respondent No. 3
4. BEBY (Mother of deceased)
W/o Sh. Devki NandanRespondent No. 4
5. DEVKI NANDAN (Father of deceased)
S/o Late Sh. Pyare Lal GautamRespondent No. 5

All R/o C-29, Street No. 4, Nam Dev Gali,
North Chhajpur, India Niketen, Shahdara, Delhi-110032
Petitioner No. 1 & 3 also residing at: L-331B, Vijay Nagar
Sector-9, Ghaziabad, U.P.-201001

6. PANKAJ (Driver)
S/o Sh. ChandrabhanRespondent No.6



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7. RAM SINGH YADAV (Regd. Owner)
S/o Sh. Girdhari Lal YadavRespondent No. 7
Through: Mr. Kunwar Pal Singh, Advocate for
R1 to R5 with R1 in person.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G E M E N T (Oral)

CM APPL. 72244/2024 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The Application stands disposed of.

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3. An Appeal under Section 173 of the *Motor Vehicles Act, 1988* ('M.V. Act' *hereinafter*) has been filed on behalf of the Appellant against the Award dated 21.08.2024 whereby compensation in the sum of Rs.82,81,000/- along with the interest @8% p.a. has been granted, on account of death of Mr. Narender Gautam, aged about 33 years, in a road accident on 01.07.2022.
4. The *sole ground of challenge* against the Award by the Appellant/ Insurance Company is that 50% Future Prospects have been granted instead of 40%. It is claimed that from the Appointment letter, it is evident that there was a *Termination Clause*, which provided that the job of the deceased could have been terminated for no reason, at any time by the employer. Furthermore, from the salary structure, it is evident that there were no annual Increments being given, which could have mirrored the character of a permanent job. It being an employment on *fixed salary* with no certainty of



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the tenure, it could not have been taken as a permanent job and therefore, Future Prospects should have been considered as 40%, in the light of the Judgment of National Insurance Co. Ltd. vs. Pranay Sethi, AIR 2017 SC 5157.

5. Reliance has also been placed on Smt. Anjum Ansari & Ors. vs. R. Rajesh Rao & Ors., Miscellaneous Appeal No.2423/2018, decided on 20.07.2024, to support the assertions in regard to the character of a job, has been permanent in nature.

6. *Learned counsel on behalf of the Claimants, has appeared on advance Notice.*

7. **Submissions heard and record perused.**

8. *Briefly stated*, on 01.07.2022 at 11:30 p.m., the deceased Narender Kumar Gautam after finishing his duty at CBD Mall, Karkardooma, was going towards his home at Vijay Nagar, Ghaziabad, on his motorcycle bearing no. DL 1 3-SS- 7776. When he reached near Hemkund Petrol Pump, Sahibabad. Ghaziabad, U.P., an Eicher Canter vehicle bearing registration no. UP 14-JT-7988 ('offending vehicle' *hereinafter*), being driven by Respondent No. 6 at a fast speed, in rash and negligent manner, came from behind and hit his motorcycle with a great force. As a result, he sustained fatal injuries and died on the spot.

9. FIR No. 998/2012 was registered under Sections 279/304-A of the *Indian Penal Code, 1860* at PS Sahibabad, against Respondent No. 6/Sh. Pankaj, Driver of the offending vehicle.

10. Petition under *Sections 166 & 140 of the M.V. Act, 1988* for compensation, was filed by legal representatives of the deceased Narender



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Kumar Gautam/Deceased.

11. The *Sole Ground* on which the impugned Award is challenged by the Appellant/Insurance Company is that *50% Future Prospects* have been granted instead of 40%, which is erroneous as in terms of *Clause 6* of the Terms and Conditions of the Employment, Ex. PW-4/1(colly) continued employment was not guaranteed and thus, was not permanent.

12. The Ld. Tribunal has observed that the Deceased/Narender Kumar Gautam was working as an Assistant Manager in Reliance Retail Limited, Delhi as proved on record by PW4, the witness from the employer of the deceased. It was further observed that the documents (Ex.PW4/1 to Ex.PW4/4) prove that the job of deceased was of permanent nature and thus, rightly observed that an addition of 50% of the income of the deceased, who belonged to the age group below 40 years, has to be considered towards Future Prospects as per the National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680.

13. From the perusal of the *Terms and Conditions of Employment* it is evident that *Clause 6* is merely a standard boiler plate Termination Clause which essentially lays down the powers of termination of the Employer and is *ex facie* silent on the nature of employment. Therefore, the Ld. Tribunal has correctly awarded Future Prospects which warrant no interference.

Conclusion:

14. There is no merit in the Appeal which is accordingly, dismissed along with pending Applications (if any). The statutory amount be returned to the Appellant, in accordance with Law.



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**NEENA BANSAL KRISHNA
(JUDGE)**

DECEMBER 10, 2024/RS

Signature Not Verified

Digitally Signed By: AHIL
SHARMA

Signing Date: 09.01.2025
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