

\$~R-116

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

Date of Decision: 30.05.2016

+ **MAC.APP. 21/2008 & CM No.631/2008**

THE ORIENTAL INSURANCE CO. LTD. Appellant
Through Mr. A K Soni, Adv.

versus

SAROJ AND ORS. Respondent
Through None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 28.06.2004, Chhatrapal aged 36 years, died in motor vehicular accident due to negligent driving of motor vehicle bearing registration No.DL 1PB 5906 (the offending vehicle), concededly insured against third party risk with the appellant insurance company. The first to sixth respondents (claimants), the dependent family members of the deceased Chhatrapal, instituted an accident claim case (suit No.835/2004) on 22.09.2002 seeking compensation under Sections 166 & 140 of Motor Vehicles Act, 1988 (MV Act). The tribunal held inquiry and, by judgment dated 10.10.2007, upheld their case about death having occurred due to negligent driving of the offending vehicle. The tribunal awarded compensation in the sum of ₹7,64,600/- with interest at 7% per annum from the date of filing of the petition till realization. The insurer which was directed to satisfy the award, though also granted right to recover the same from the driver and owner of the offending vehicle in the face of finding

about breach of terms and conditions of the policy, questions the computation of loss of dependency.

2. At the hearing, the learned counsel for the insurer submitted that the conclusion of the tribunal in assuming the income of ₹4,749/- per month is erroneous. Having heard the learned counsel for the appellant at length and having gone through the tribunal's record, it is found that the claimants had submitted salary certificate (Ex.PW2/A) indicating monthly salary of ₹4,500/-. Though the tribunal was not inclined to proceed on the said document, it calculated the loss of dependency by assuming the minimum wages and on that basis, having factored in the progressive rise, arrived at the figure of ₹4,749/- per month. The income could not have been held proved more than what was pleaded in the facts and circumstances. Thus, it is held that the loss of dependency has to be computed on the income of ₹4,500/- per month. Going by dictum in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the multiplier of 15 would apply. Since the claimants were six in number, the deduction on account of personal & living expenses had to be to the extent of 1/4th.

3. In these circumstances, the dependency loss is computed as $(4,500 \times 3 \div 4 \times 12 \times 15)$ ₹6,07,500/-.

4. It is noted that the tribunal had awarded only ₹30,000/- towards loss of love & affection and consortium and ₹5,000/- towards funeral expenses. Following the view taken by this court in *Madhu Marwaha & Anr vs. Dal Chand & Anr.*, FAO 102/2001, decided on 01.02.2016, which is referred by the counsel for the claimants, compensation in the sum of Rs.50,000/- each towards loss of consortium and loss of love & affection and Rs.10,000/-

each towards funeral expenses and loss to estate are added. Thus, the total compensation in the case comes to (Rs.6,07,500 + Rs.1,20,000) Rs.7,27,500/-. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*], the rate of interest is increased to 9% per annum from the date of filing of the petition till realization.

5. The award is modified accordingly.

6. By order dated 11.02.2008, the insurance company had been directed to deposit the entire awarded amount from which 50% was allowed to be released to the claimants. By subsequent order dated 14.05.2008, the balance 50% lying in the deposit was also released to the claimants.

7. Since the award has been modified, the insurer will be obliged to deposit the balance, if any, liable to be paid to the claimants and conversely, if excess has been paid, have the liberty to take out appropriate proceedings before the tribunal to recover the same. Needful compliance about payment to the claimants, if required to be made, must be done within 30 days.

8. Statutory deposit, if made, shall be refunded.

9. The appeal is disposed of in above terms.

10. A copy of this judgment shall be sent by the registry to the claimants and the insurance company.

(R.K. GAUBA)
JUDGE

MAY 30, 2016/VLD