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

% Judgment delivered on: 30<sup>th</sup> September, 2021

+ MAC.APP. 151/2020& CM APPLN. 9671/2020, 23368/2021  
& 30853/2021

THE ORIENTAL INSURANCE CO LTD ..... Appellant

versus

SAVANA & ORS ..... Respondents

**Advocates who appeared in this case:**

For the Petitioner : Mr. A.K. Soni, Advocate

For the Respondents : Mr. Somnath Parashar, Advocate

**CORAM:-**

**HON'BLE MR JUSTICE SANJEEV SACHDEVA**

**JUDGMENT**

**SANJEEV SACHDEVA, J.**

1. The hearing was conducted through video conferencing.
2. Appellant impugns award dated 03.12.2019 whereby the claim petition has been allowed and compensation awarded to respondent no. 1 to 4. The claim petition was filed on account of the demise of one Sazid Khan. The claimants are the legal heirs of the deceased being: wife, minor son and parents.
3. The only challenge to the impugned award is with regard to the computation. It is contended by learned counsel for the appellant that

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MAC.APP. 151/2020

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tribunal has erred in deducting one-fourth of the salary towards personal expenses whereas one-third should have been deducted. He relies on the decision of the Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi (2017) 16 SCC 680* as also *Sarla Verma & Ors. Vs. Delhi Transport Corporation & Anr (2009) 6 SCC 121*.

4. Learned counsel appearing for the respondent/claimants submits that the tribunal has erred in not awarding fair and just compensation in so far as loss of consortium is concerned.

5. He relies on the judgment of the Supreme Court in *United India Insurance Company Ltd. Vs. Satinder @ Satwinder Kaur 2020 SCC OnLine SC 410 (Civil Appeal No.2705/2020)* to contend that loss of consortium is not only filial loss of consortium but parental loss of consortium as well. He submits that a sum of Rs. 40,000/- each is liable to be awarded to each of the claimant.

6. Learned counsel submits that fair and just compensation is liable to be granted even if there is no application seeking enhancement of compensation. Learned counsel relies on the judgment passed in MAC. APP. 629/2010, titled '*Oriental Insurance Company Ltd. Vs. Mamta Kumari & Ors.*' and the judgment passed by the Supreme Court in '*Ibrahim Vs. Raju*' (2011) 10 SCC 634.

7. Since it is an admitted case that the father of the deceased was not financially dependent upon the deceased, applying the ratio of the judgment of the Supreme Court in *Sarla Verma (Supra)* out of the income received by the deceased, one-third should have been deducted towards personal and living expenses of the deceased.

8. Accordingly, compensation is liable to be re-computed under the head of loss of dependency. Further in view of the ratio of the judgment of the coordinate bench of this Court in *Mamta Kumar (Supra)* and of the Supreme Court in *Ibrahim (Supra)*, the amount awarded under the head of loss of consortium is liable to be increased even without the filing of a cross appeal in as much as a sum of Rs. 40,000/- is liable to be awarded to each of the claimants by applying the ratio of the Judgment of the Supreme Court in *Satinder @ Satwinder Kaur*.

9. In view of the above, the compensation is liable to be re-computed as under: -

LOSS OF DEPENDENCY	=	Rs. 28,99,814.40
LOSS OF CONSORTIUM	=	Rs. 1,60,000.00
FUNERAL EXPENSES	=	Rs. 15,000.00
LOSS OF ESTATE	=	Rs. 15,000.00
MEDICAL EXPENSES	=	Rs. 8,849.00

<b>Total</b>	<b>=</b>	<b>Rs. 30,98,663.40</b>
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10. It is informed that the amount originally awarded has been deposited in this Court.

11. Accordingly, the appeal is allowed and the impugned award is modified to the above extent.

12. The amount that is reduced on account of modification of the award shall be refunded to the Insurance Company along with statutory amount that was deposited at the time of filing of the appeal. Balance amount shall be transmitted forthwith to the Motor Accident Claims Tribunal to be disbursed in accordance with the scheme of disbursal.

13. The appeal is disposed of in the above terms.

14. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

**SANJEEV SACHDEVA, J**

**SEPTEMBER 30, 2021**

**‘rs’**