

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3867 OF 2017

[ARISING FROM SPECIAL LEAVE PETITION (C) NO.4009 OF 2017]

ORIENTAL INSURANCE CO LTD

APPELLANT(S)

VERSUS

BABY RADHIKA GUPTA AND ANR

RESPONDENT(S)

J U D G M E N T

KURIAN, J.

Leave granted.

2. This is an appeal filed by the appellant/insurance company aggrieved by the order passed by the High Court declining to interfere with the order passed in execution by the Motor Accident Claims Tribunal.

3. The respondents filed an application for compensation before the Motor Accident Claims Tribunal, Delhi. The Tribunal awarded a total compensation in the sum of Rs.44,50,000/- along with interest @ 9% from the date of filing of the petition till its realization. The appellant/insurance company went in appeal before the High Court and the

same was reduced to Rs.5,82,132/-.

4. During the pendency of the appeal before the High Court, the respondents were permitted to withdraw 80% of the amount deposited in Tribunal and the remaining 20%, with accrued interest, was withdrawn by the appellant/insurance company. While disposing of the Appeal No.239 of 2004, the High Court, in paragraph 25, held as under:-

"25. Vide interim order dated 13.7.2004, appellant insurance was directed to deposit entire compensation amount in the Tribunal. 80% of the deposited amount was directed to be released to the respondent/claimants. It is hereby directed that balance 20% of deposited amount together with accrued interest thereon be returned to the appellant insurance company. It is further held that insurance company is held entitled to recover the excess sum from the respondents which has been released in the favour of the respondents."

5. Thereafter, the respondents moved this Court in Civil Appeal No.7736 of 2009, which was disposed of by judgment dated 24.11.2009 enhancing the total compensation to Rs.15,70,892/-. With the above modification on the amount, the appeal was disposed

of with a direction to the appellant/insurance company to pay the balance amount to the respondents within four weeks with interest @ 9% per annum.

6. Finding that the respondents have withdrawn much more than what they would have been entitled to, going by the order passed by this Court, the appellant insurance company filed an appeal seeking recovery of the interest portion on the principal amount drawn in excess of what they have been actually entitled to.

7. No doubt, the appellant has made out a case, since there was liberty given to the appellant/insurance company to recover the excess sum payable to the respondents. However, having regard to the peculiar facts of this case, we are of the view that this is an eminently fit case to invoke our jurisdiction under Article 142 of the Constitution of India for the reason that the deceased employee died at the age of 32 years and the claimants having not been granted 50% of enhancement in the salary, no amount was given to the minor towards loss of love, care and protection and further that for consortium only an amount of Rs.25,000/- was paid.

8. Hence, having regard to the peculiar facts of this case, we dismiss this appeal, leaving the question of law open.

9. Pending application(s), if any, shall stand disposed of.

10. There shall be no orders as to costs.

.....J.
[KURIAN JOSEPH]

.....J.
[R. BANUMATHI]

NEW DELHI;
MARCH 09, 2017.



JUDGMENT