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

Date of Decision: 27.05.2016

+ **MAC.APP. 1032/2013**

NATIONAL INSURNACE CO. LTD. Appellant

Through: Mr. L.K. Tyagi, Adv.

versus

HARSHARAN BIR KAUR PANDEY & ORS. Respondents

**Through: Mr. Kamal Mehta & Mr. Sudeep
Singh, Advs.**

AND

+ **MAC.APP. 24/2014**

HARSHARAN BIR KAUR PANDEY & ORS. Appellants

**Through: Mr. Kamal Mehta & Mr. Sudeep
Singh, Advs.**

NATIONAL INSURNACE CO. LTD. Respondents

Through: Mr. L.K. Tyagi, Adv.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Ishwar Chandra Pandey, then aged about 54 years, died as a result of injuries suffered in a motor vehicular accident that occurred involving

negligent driving of truck bearing No. HR 36 GA 0120 (offending vehicle), admittedly insured against third party risk for the period in question with National Insurance Company Ltd. (appellant in MAC Appeal No. 1032/2013). The dependent family members of Ishwar Chandra Pandey (appellant in MAC Appeal No. 24/2014) instituted an accident claim case (Suit No. 278/2003) on 24.04.2003 under Sections 166 and 140 of Motor Vehicles Act, 1988.

2. The tribunal held inquiry and, by judgment dated 21.07.2013 upheld the case of death having occurred due to negligent driving of the offending vehicle. The said finding has since attained finality. By the said judgment, the tribunal awarded compensation in the sum of ₹ 25,35,000/- with interest @ 7.5% per annum from the date of filing of the petition (24.04.2003), holding the insurer liable to pay.

3. Both parties, the insurer and the claimants, having felt aggrieved have come with their respective appeals. While appellant questions the loss of dependency on the ground the income declared in the income-tax return (ITR) for the assessment year 2001-2002 (Ex.PW4/C) was wrongly adopted because the same had been filed after the death, it also raises the issue of addition of future prospects of increase to the extent of 30%, referring in this context to the age of the deceased (54 years) and the fact that the ITRs for the preceding assessment years, i.e. 1998-99 (Ex.PW2/A) and assessment year 2000-2001 (Ex.PW2/B) indicated fluctuation in the income. The insurance company then raises the issue of penal interest pointing out that the tribunal has directed in (para 13 of) the judgment that it was to deposit the awarded amount within a period of 30 days, failing which the rate of

interest would stand enhanced to the extent of 12% per annum “for the period of delay”.

4. *Per contra*, the claimants in their appeal argue that the tribunal had wrongly excluded from consideration the amount of tax deducted at source (₹ 44,773) as shown in the ITR (Ex.PW4/C) stating that the benefit of same required to be accorded.

5. The argument of the insurer against adoption of the ITR for the assessment year 2001-2002 as the benchmark on the ground it was filed after the death must be rejected for the simple reason the declaration in the said ITR is supported by proof of tax deducted at source and, therefore, it cannot be said to be just in the air. The inclusion of the element of future prospects of increase, however, was erroneous for the reason the deceased had already turned 54 and per dictum in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, no such element could have been taken into consideration. Further, ITR for preceding year shows that there was no regularity in the earnings. Rather, the income was fluctuating upwards and downwards and, therefore, there is no clear proof of progressive rise over the period. The submission of the claimants with regard to the tax deducted at source is apparently fallacious. The tribunal has computed the income on the basis of average of 8 months for the assessment year 2001-02 and also made calculation correspondingly as to the tax payable thereupon. For these calculations, the tribunal need not even go into the question as to whether tax was properly deducted at source or not.

6. Thus, the loss of dependency has to be recalculated.

7. Since the tribunal had found the net income to be ₹ 2,60,098, applying the multiplier of 11 (rightly so chosen by the tribunal), the loss of dependency comes to $(260098 \times 2 \div 3 \times 11)$ ₹ 19,07,385/- rounded off to ₹ 19,08,000/-.

8. It is noted that the tribunal awarded only ₹10,000/- each towards love & affection. Having regard to the date of accident and following the view taken in *Madhu Marwaha & Anr. Vs. Dal chand & Anr.* decided on 1st February, 2016, award of ₹ 50,000/- each towards love & affection and loss of consortium, ₹ 10,000/- towards funeral expenses and loss to estate are granted. In this view, the total compensation payable in the case is computed as $(19,08,000 + 1,20,000)$ ₹ 20,28,000/-.

9. Following the consistent view taken by this Court, however, the plea of the claimants with regard to rate of interest must be accepted. It is increased to 9% per annum from the date of filing of the petition till realization [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*].

10. This Court does not find any impropriety in the direction about the time bound deposit of the award and in case of default the imposition of penal interest. Of course, the liability of penal interest would arise having regard to the terms of the order whereby this Court had granted stay against enforcement.

11. The award is thus, modified also with increase in the rate of interest.

12. By order dated 13.11.2013, the insurance company had been directed to deposit 60% of the awarded amount with upto date interest with the Registrar General within the period specified from which 40% was allowed to be released, the balance kept in fixed deposit receipt for a period of six

months to be renewed periodically. Since the awarded compensation has been reduced, the Registrar General shall now calculate the amount payable to the claimants as per their shares in the impugned judgment and release the same from the balance refunding excess, if any, with statutory deposit, if made, to the insurance company. Conversely, if any amount stands outstanding, the insurer shall deposit the balance with the tribunal within 30 days making it available to the claimants.

13. The appeals stand disposed of in above terms.

MAY 27, 2016
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(R.K. GAUBA)
JUDGE