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

Decided on: 08th November, 2017

\+ MAC.APP. 15/2017

RELIANCE GENERAL INSURANCE COMPANY LTD ..... Appellant

Through: Mr. A.K. Soni, Advocate

versus

SHAKUNTALA & ORS ..... Respondents

Through: Mr. Anshuman Bal, Adv. for R-1 to 4

\+ MAC.APP. 966/2017

SHAKUNTALA & ORS ..... Appellants

Through: Mr. Anshuman Bal, Advocate

versus

RELIANCE GENERAL INSURANCE COMPANY LTD. & ORS ..... Respondents

Through: Mr. A.K. Soni, Advocate for R-1

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Dayal Singh Rawat, then 55 years old, working with UCO Bank at a gross salary of Rs.33,486/- p.m., suffered injuries in a motor vehicular accident that occurred on 31.12.2010 due to negligent driving of a car bearing registration no.DL-9C-QS-0407 (car) which was admittedly insured against third party risk with Reliance General

Insurance Company Ltd. (insurer) for the period in question and died in the consequence. His wife and three children (collectively, the claimants) instituted an accident claim case (suit no.4649/2016) on 19.02.2011 seeking compensation under Section 166 of the Motor Vehicles Act, 1988 impleading the driver, owner and insurer of the car as party respondents.

2. The Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 15.10.2016, accepted the claim that the death had occurred due to negligent driving of the car by its driver. It awarded compensation in the total sum of Rs.31,60,000/- calculating it thus :-

Loss of income	Rs.29,25,000/-
Loss of Estate	Rs.10,000/-
Love and affection	Rs.1,00,000/-
Consortium	Rs.1,00,000/-
Funeral expenses	Rs.25,000/-
Total	Rs.31,60,000/-

3. It fastened the liability to pay with interest at the rate of 9% p.a. on the insurer.

4. The insurer has come up in appeal (MACA 15/2017) submitting that the award is excessive, arguing that the finding on the issue of negligence is erroneous and unfounded. It also questions the computation of compensation pointing out that the tribunal has failed to make deduction on account of the income tax liability. It is also submitted that the non-pecuniary heads of damages awarded are excessive. The counsel for the insurer further submits that the

deceased was more than 55 years old and, therefore, the multiplier of 9 should have been applied.

5. *Per contra*, the claimants by their appeal (MACA 966/2017) submit that the tribunal fell into error by deducting Rs.275/- as conveyance allowance from the monthly income while calculating loss of income and by not including the benefit of future prospects. It is also the submission of the claimants that deduction on account of personal and living expenses should have been to the extent of one-fourth keeping in view that there were four dependent family members.

6. The arguments on the issue of negligence raised by the insurance company cannot be accepted. The negligence on the part of the car driver is writ large even in the pleadings. The car had swerved suddenly during the course of journey, the evidence showing it having collided against the pavement. Even if the driver of the car lost control in order to avoid collision against a motorcycle which had suddenly come in front, the sequence of events narrated reveal the negligence on his part. He was expected to be watchful about the conduct of other motorists on the road and to keep not only a safe distance but also move at a speed where he could check it if so required. The tribunal's conclusion based on the principle of *res ipsa loquitur* does not call for any interference.

7. There are indeed errors in the calculation of loss of dependency by the tribunal. The amount of Rs.275/- receivable as conveyance allowance should not have been deducted since it was a part of the

regular terms and conditions of the service and would result in corresponding savings to the family.

8. Since the deceased was a regular and permanent employee of the bank, the element of future prospects had to be factored in. Going by the ruling of the Constitution Bench of the Supreme Court rendered on 31.10.2017 in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors.*, this factor will have to be restricted to 15%.

9. It appears that the first claimant Shakuntala appearing as her own witness PW-1 admitted that the eldest daughter Poonam (second claimant) was in private job. But then, it has to be remembered that she was just 22 years old and being unmarried would still be dependent on the father. The mere fact that she may have joined some service around the time of the death would not keep her claim out of consideration. In these circumstances, deduction on account personal and living expenses will have to be to the extent of one-fourth.

10. On the income of Rs.33,486/-, the income tax liability, as per the prevalent rates, for the financial year 2010-2011 would be about Rs.15,000/-, which will have to be discounted.

11. As per voter identity card (Ex. PW1/5), the age of the deceased as on 01.01.2008 was 53 years. In these circumstances, his age on the date of death (31.12.2010) would be 55 years 11 months. In this view, the submission of the insurer about the multiplier must be accepted. Instead of multiplier of 11, the multiplier of 9 would apply.

12. The loss of dependency is, thus, re-calculated as [Rs.33,486/- x 12 – Rs.15,000/- x 115/100 x 3/4 x 9] Rs.30,02,783.40, rounded off to Rs.30,03,000/- (Rupees Thirty Lakh and three thousand only).

13. Following the ruling of the Constitution Bench in *Pranay Sethi* (supra), the only permissible non-pecuniary damages in the sum of Rs.15,000/- each towards loss to estate and funeral expenses and Rs.40,000/- on account of loss of consortium are added. Thus, the total compensation in the case comes to [Rs.30,03,000/- + Rs.15,000/- + Rs.15,000/- + Rs.40,000/-] Rs.30,73,000/- (Rupees Thirty Lakh and seventy three thousand only). The award is modified accordingly. It shall carry interest as levied by the tribunal.

14. By order dated 09.01.2017 in MACA 15/2017, the insurance company was directed to deposit the entire awarded amount with interest with the tribunal within the period specified. By order dated 10.03.2017, fifty percent (50%) of the said awarded amount was released to the claimants. The tribunal, it is noted, had apportioned the award by specifying the amounts in favour of the four claimants. As the compensation has been reduced, it is directed that the amount already received by the claimants other than Shakuntala (widow) shall be treated as the amount receivable by them, the entire balance going to the first claimant Shakuntala (widow) only. The tribunal shall release the amount payable to the claimant in terms of the modification ordered above refunding the excess in deposit to the insurance company.

15. The statutory amount be refunded to the insurance company.

16. Both appeals are disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 08, 2017
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