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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 9th November, 2017

\+ MAC.APP. 31/2012

RELIANCE GENERAL INSURANCE CO. LTD...... Appellant

Through: Mr. Arun Yadav, Adv.

versus

SUNITA DEVI & ORS. ..... Respondents

Through: Mr. Anshuman Bal, Adv. for claimants.

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

JUDGMENT (ORAL)

1. Vishwanath @ Bablu, aged 25 years, died due to injuries suffered in a motor vehicular accident that occurred on 09.05.2010 due to negligence on part of the driver of motor vehicle described as JCB bearing registration no. HR 38 L 8405, which was concededly insured against third party risk with the appellant (insurer) for the period in question. Accident claim case (case no. 13/11) was instituted on 06.01.2011 for and on behalf of his wife and daughter besides his parents, they being first to fourth respondents in the appeal (collectively, the claimants). The tribunal held inquiry and, by judgment dated 01.10.2011, found that case for compensation due to negligence of the JCB driver has been made out. It awarded

compensation in the sum of Rs. 15,61,550/- and directed the appellant (insurer) to pay the same with interest @ 7.5% per annum.

2. The insurer by the appeal at hand presses for re-computation of compensation on the ground the calculations were erroneous and the award excessive. It further submits that the JCB driver was not holding a valid driving licence and, therefore, there was breach of terms and conditions of the insurance policy on which account the appellant should have been exonerated.

3. It is noted that the evidence of the widow (PW-1) had brought out that the deceased was earning his livelihood as a carpenter. Though it was claimed that he was self-employed earning Rs. 7,000/- per month, no formal proof could be mustered. Thus, the tribunal went by minimum wages payable to a non-matriculate (Rs. 5,850), which, it may be observed is the same as the wages payable at that point of time to a semi-skilled worker. The tribunal added the element of future prospects of increase to the extent of 50% and, after deducting 1/4th towards personal & living expenses, applied the multiplier of 18 to calculate the loss of dependency, adding Rs. 25,000/- towards funeral charges, Rs. 1,00,000/- towards loss of love & affection and Rs. 10,000/- towards loss of consortium and Rs. 5,000/- towards loss to estate.

4. The submission of the claimants that the minimum wages of a skilled worker should have been invoked cannot be accepted as there is no proof of any special training undergone by the deceased.

5. Following 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., the element of future prospects is to be restricted to 40% and the non-pecuniary damages also revised. The contention of the insurer about there being no dependency of the father, however, cannot be accepted as the evidence affirming this fact was not controverted.

6. The loss of dependency is, thus, recalculated as (5850 x 140 ÷ 100 x 3 ÷4 x 12 x 18) Rs. 13,26,780/-, rounded off to Rs. 13,27,000/-.

7. Instead of awards as granted under the non-pecuniary heads of damages by the tribunal, Rs. 40,000/- is added on account of loss of consortium and Rs. 15,000/- each towards loss of estate and funeral expenses.

8. Thus, the total compensation is recomputed as (13,27,000 + 40,000 + 15,000 + 15,000) Rs. 13,97,000/- (Rupees Thirteen Lacs and Ninety Seven Thousand Only). The award is modified accordingly.

9. Following the consistent view taken by this Court, the rate of interest is increased to 9% (nine per cent) 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. The tribunal's judgment takes note at length (in paras 4 and 5) of the utter neglect on the part of the insurance company in prosecuting its defence. Inspite of opportunity it did not file any report or written statement. Its defence was struck off but later on its application it was granted another opportunity which too was not availed. In the entire appeal, there is no explanation offered for failure on the part of the insurer to assist to bring home its case of breach of

terms and conditions of the insurance policy. The plea is, therefore, rejected.

11. By order dated 09.01.2012, the insurance company had been directed to deposit 75% of the awarded amount with the Registrar General. By order dated 04.05.2012, 50% of the awarded amount with proportionate interest was allowed to be released. The balance lying in deposit with accrued interest shall also now be released to the claimants. The insurance company shall satisfy the remainder of the award by requisite deposit with the tribunal within thirty days.

12. The statutory amount shall be refunded after proof of the satisfaction of the award is furnished.

13. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 09, 2017
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