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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 16th November, 2017

\+ MAC.APP. 133/2016 & CM No.4607/2016(stay)

NATIONAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. Amit Gaur & Mr. Pradeep Gaur, Advs.

versus

NANNO & ORS. ..... Respondents

Through: Mr. Dilawan Singh, Adv. for R1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Mohammad Laik, bachelor son of the first respondent (the claimant), aged 31 years old, suffered injuries in motor vehicular accident that occurred on 01.05.2013 due to negligent driving of motor vehicle described as Gramin Seva bearing registration no. DL-2W-4655 by the second respondent (the driver). Since the said vehicle was registered in the name of third respondent (the owner), and insured against third party risk for the period in question with the appellant (insurer), the liability to pay compensation as determined in the sum of Rs.12,41,968/- by the tribunal by its judgment dated 09.11.2015 of the accident claim case (suit no.185/2013) of the first respondent, initially was fastened upon the insurer.

2. The insurer by the appeal at hand, questions the award of compensation in calculating the loss of dependency, by adding the element of future prospects of increase to the extent of fifty percent (50%) and awards granted under the heads of non-pecuniary damages being excessive. The insurer had also pleaded before the tribunal that there was breach of terms and conditions of the insurance policy as the vehicle in question which was meant to carry six passengers, besides one driver, was overloaded. Since it carried 16-17 passengers at the relevant point of time, the tribunal had granted recovery rights in favour of the insurer, its plea now being that it should have been exonerated.

3. In view of the dispensation 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 of increase will have to be restricted only to the extent of forty percent (40%), the income of the deceased having been calculated notionally with the help of minimum wages (Rs.7,722/-). Similarly, the award granted under the non pecuniary heads of damages as Rs.20,000/- for funeral expenses, Rs.1,00,000/- for loss of love and affection and Rs.10,000/- for loss of estate also need modification as per ruling in *Pranay Sethi* (supra).

4. The loss of dependency is thus recomputed as (7722x140/100/2x12x16) Rs.10,37,836.8/- rounded off to Rs.10,38,000/- and only the amounts of Rs.15,000/- each towards loss of estate and funeral expenses are added under the non-pecuniary heads of damages. Thus, the total compensation is determined as (10,38,000+15,000+15,000) Rs.10,68,000/- (Rupees Ten Lacs Sixty Eight Thousand Only).

5. The award is modified accordingly. It shall carry interest as levied by the tribunal.

6. Since the interest of the insurer is duly protected by the grant of recovery rights, there is no case made out for total exoneration in the context of breach of terms and conditions of the insurance policy.

7. By order dated 08.02.2016, insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Tribunal and out of which 50% was permitted to be released. The tribunal shall now calculate the amount payable to the claimants in terms of the modification ordered above and release the same to the claimants, refunding the excess in deposit, if any, to the insurance company.

8. The statutory amount shall be refunded.

9. The appeal is accordingly disposed of.

R.K.GAUBA, J.

NOVEMBER 16, 2017/umang