$~R-467

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 10th November, 2017

\+ MAC Appeal No. 261/2012

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

Through: Mr. Siddharth Yadav for Mr. Arun Yadav, Adv.

versus

JANKI DEVI & ORS .....Respondents

Through: None.

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

JUDGMENT (ORAL)

1. Raj Kumar Mishra, aged 34 years old, suffered injuries in motor vehicular accident that occurred on 20.08.2011 due to negligent driving of Scorpio Car bearing registration no. DL 4C NB 3280 and died in the consequence. His wife and other members of the family dependent on him, they being first to third respondents (collectively, the claimants), instituted accident claim case (suit no. 445/11) on 19.09.2011, seeking compensation impleading, besides the driver and owner of the car, its insurer (the appellant). After inquiry, by judgment dated 02.112011, the tribunal awarded compensation in the sum of Rs. 15,52,592/- and directed the insurer to pay with interest @ 7.5%, the said amount inclusive of Rs. 15,02,592/- towards loss of dependency, besides Rs. 10,000/- each on account of loss of

consortium and loss to estate, Rs. 25,000/- towards loss of love & affection and Rs. 5,000/- as funeral expenses.

2. The appeal was filed by the insurer questioning the calculation of compensation, particularly the element of future prospects of increase in income to the extent of 50%.

3. The tribunal noted that the claimants had not proved the regular earnings of the deceased and adopted the minimum wages of a matriculate (Rs. 7,826/-) as the benchmark. Following the ruling of a 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 will have to be restricted to 40%. Thus, the loss of dependency is recalculated as (7826 x 140 ÷ 100 x 2 ÷ 3 x 12 x 16) Rs. 14,02,419.20, rounded off to Rs. 14,03,000/-.

4. In view of the ruling in *Pranay Sethi* (supra), the non-pecuniary heads of damages are also revised, and amounts 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 (14,03,000 + 15,000 + 15,000 + 40,000) Rs. 14,73,000/-(Rupees Fourteen Lakhs Seventy Three Thousand Only). The award is modified accordingly.

5. Following the consistent view taken by this Court, the rate of interest is increased to 9% (nine percent) 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*.].

6. By order dated 14.03.2012, the insurance company had been directed to deposit entire awarded amount of compensation with UCO Bank, Delhi High Court Branch and by order dated 25.02.2013, 60% was allowed to be released to the claimants. The balance shall now be released to the claimants in terms of the modification ordered above. The insurance company shall satisfy the enhanced award by requisite deposit with the Tribunal within 30 days, making it available to be released to the claimant.

7. The statutory deposit shall be refunded to the appellant after proof is shown of the award having been satisfied.

8. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 10, 2017
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