$~R-692 & 693

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

Decided on: 11th December, 2017

\+ MAC APPEAL 1279/2012 and CM 20950/2012

THE NEW INDIA ASSURANCE COMPANY LTD. ..... Appellant

Through: Mr. J.P.N. Shahi, Advocate

versus

OM PRAKASH & ORS. ..... Respondents

Through: Mr. Navneet Goyal, Adv. for R-1 & 2

\+ MAC APPEAL 202/2016

OM PRAKASH & ANR. ..... Appellant

Through: Mr. Navneet Goyal, Advocate

versus

THE NEW INDIA ASSURANCE COMPANY LTD. & ORS. ..... Respondents

Through: Mr. J.P.N. Shahi, Adv. for R-1

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

JUDGMENT (ORAL)

1. Rakesh, aged 24 years, a bachelor suffered injuries in a motor vehicular accident that occurred on 28.06.2017 due to the negligent

driving of a tanker bearing registration no.HR-37A-4035 and died in the consequence. His parents (claimants) instituted accident claim case (MACT 694/2007) on 09.08.2007 seeking compensation.

2. The Motor Accident Claims Tribunal (Tribunal), after inquiry, by judgment dated 05.10.2012, awarded compensation in the sum of Rs.5,95,152/- directing New India Assurance Company Ltd. (insurer) to pay, it admittedly being the insurer against third party risk for the period in question in respect of the offending vehicle adding the liability of interest at the rate of 7.5% p.a., the amount being inclusive of Rs.5,50,152/- towards loss of dependency, Rs.25,000/- for loss of love and affection, and Rs.10,000/- each for funeral expenses and loss to estate.

3. The insurer had come up with appeal (MACA 1279/2012) questioning the calculation of compensation primarily pressing it on the ground of grant of future prospects of increase. *Per contra*, the claimants by their appeal (MACA 202/2016) seek enhanced compensation on the ground the award is inadequate.

4. The claimants had not been able to strictly prove the earnings of the deceased, which was assumed notionally with the help of minimum wages (Rs.3,9,18/- p.m.). In these circumstances, the element of future prospects of increase was correctly added, though it should have been to the extent of 40%. [see judgment 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.*

5. The loss of dependency is thus re-computed as [Rs.3,918/- x 140/100 / 2 x 12 x 18] Rs.5,92,401.60, rounded off to Rs.5,93,000/-. The non-pecuniary awards will also have to be brought in *sync* with the dispensation in *Pranay Sethi* (supra). Thus, in lieu of the awards granted by the tribunal, Rs.15,000/- each towards loss to estate and funeral expenses are added, raising the compensation to [Rs.5,93,000/- + Rs.15,000/- + Rs.15,000/-] Rs.6,23,000/- (Rupees Six Lakh and twenty three thousand only). The award is modified accordingly.

6. Following the consistent view taken by this Court, the rate of interest 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*.]

7. The tribunal had specified the amounts payable to the claimants which is modified. It is directed that 10% of the awarded amount would be released to the first claimant while the balance shall go the second claimant.

8. By order dated 17.12.2012 on MACA 1279/2012, the insurance company was directed to deposit 60% of the awarded amount with up-to-date proportionate interest which was permitted to be released to the claimants. The insurance company will now deposit the balance of its liability in terms of the modified award within 30 days with the tribunal, making it available to be released to the claimant.

9. The statutory amount deposited by the insurer will be refunded after proof is shown of the award having been satisfied.

10. Both the appeals and the pending application are disposed of in above terms.

R.K.GAUBA, J.

DECEMBER 11, 2017/yg