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

Decided on: 16th November, 2017

+ **MAC APPEAL No. 534/2012**

NEERU DUA & ORS. Appellants

Through: **Mr. S.N. Parashar, Adv.**

versus

SOMVIR @ SOMBEER & ORS. Respondents

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Atul Dua, 40 year old, earning his livelihood from business (grocery shop), died due to injuries suffered in motor vehicular accident that occurred on 14.01.2010, due to negligent driving of motor vehicle described as Tata Safari bearing registration no. HR 12 K 7835, insured against third party risk with the second respondent. On the accident claim case (suit no. 117/2010), instituted by his wife and three other members of the family dependant on him (now the appellants), the tribunal held inquiry and, by judgment dated 22.12.2011, awarded compensation in the total sum of Rs. 16,10,000/- directing the insurer to pay with interest @ 7.5% per annum calculating it thus:-

S.No.	Heads	Compensation
1.	Loss of financial dependency	Rs. 15,75,000/-
2.	Loss of love & affection	Rs. 10,000/-
3.	Loss of consortium	Rs. 10,000/-
4.	Funeral expenses	Rs. 5,000/-
5.	Loss to estate	Rs. 10,000/-
	Total	Rs. 16,10,000/-

2. The loss of dependency was calculated with the multiplier of 15 on the basis of finding that the deceased was 40 year old and deduction being made to the extent of 1/4th towards personal & living expenses against income taken as Rs. 1,40,000/- per annum.

3. The appeal at hand is pressed to point out that the loss of dependency was wrongly calculated as income-tax return (ITR) for assessment year 2009-2010 (Ex.PW-2/2) declared the total income to be Rs. 2,09,600/-.

4. It appears the tribunal has not properly construed the said ITR as it went by the net income drawn after permissible deductions. The error will have to be corrected now. It may also be added that given 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 of increase in income to the extent of 25% deserves to be added.

5. Thus, the loss of dependency is recomputed as $(2,09,600 \times 125 \div 100 \times 3 \div 4 \times 15)$ Rs. 29,47,500/-, rounded off to Rs. 29,48,000/-.

6. In view of the dispensation in *Pranay Sethi* (supra), award under non-pecuniary heads also needs to be suitably corrected. Therefore, Rs. 15,000/- each towards loss to estate and funeral expenses and Rs.40,000/- for loss of consortium are added. Thus, the total compensation in the case comes to (29,48,000 + 40,000 + 15,000 + 15,000) Rs. 30,18,000/- (Rupees Thirty Lakhs Eighteen Thousand Only). The award is modified accordingly.

7. 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.*]

8. Having regard to the apportionment made by the tribunal, it is directed that the entire enhanced portion of the award with corresponding effect of increase in the rate of interest shall fall to the share exclusively of first claimant Neeru Dua (widow), it to be released to her in the form of interest bearing fixed deposit receipt taken out in her name from a nationalized bank for a period of ten years with right to draw periodic interest.

9. The insurance company is directed to satisfy the enhanced award by requisite deposit with the tribunal within thirty days, making it available to be released to the claimants.

10. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 16, 2017/nk