

\$~R-696 & 697

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

Decided on: 12th December, 2017

+ MAC APPEAL 1290/2012 and CM 21086/2012

ORIENTAL INSURANCE COMPANY LIMITED

..... Appellant

Through: Mr. Pradeep Gaur, Advocate

versus

KAMLESH PAL AND ORS.

..... Respondents

Through: Mr. O.P. Mannie, Advocate for
R-1 to R-3.

+ MAC APPEAL 391/2013

KAMLESH PAL & ORS.

..... Appellants

Through: Mr. O.P. Mannie, Advocate

versus

AJAY AGGARWAL & ORS.

..... Respondents

Through: Mr. Pradeep Gaur, Advocate for
R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Gaj Ram, then over 51 years of age, employed as *baildar* with New Delhi Municipal Council (NDMC), suffered injuries in a motor vehicular accident that had occurred on 10.07.2011 due to negligent

driving of motor vehicle described as Wagon-R car, bearing registration No.DL-9CP-1737 and died in the consequence. Accident claim case (MACT No.11/11) was instituted on 22.10.2011 by his wife and two other members of the family dependent upon him (collectively, the claimants) seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988. The Tribunal, after inquiry, by judgment dated 29.09.2012, upheld the said case and awarded Rs.30,58,884/- as compensation fastening the liability to pay with interest @ 9% per annum on Oriental Insurance Company Limited (insurer) , it admittedly having issued insurance policy covering third party risk in respect of the vehicle in question.

2. The insurer by its appeal (MAC APP.1290/2012) questioned the award on the ground the loss of dependency in the sum of Rs.29,38,884/- has been wrongly calculated by inclusion of future prospects to the extent of 30%. Exception is also taken to the non-pecuniary damages which have been included in the award in the sum of Rs.1,00,000/- for loss of love and affection and Rs.10,000/- each for loss to estate and cremation charges.

3. *Per contra*, the claimants by their appeal (MAC APP.391/2013) argue that the tribunal fell into error by deducting certain allowances from the last salary drawn, this rendering the award inadequate.

4. The contention of the claimants in their appeal respecting the salary is found to be correct. Last salary slip (Ex.PW-1/3) reveals total emoluments to be in the sum of Rs.31,152/-. There is no good reason to deduct the allowances reflected in the said salary slip. All such allowances were regular in nature and part of service conditions

of the deceased with New Delhi Municipal Council and would, thus, result in corresponding savings. The gross annual income, thus, was (31151/- x 12) Rs.3,73,824/-.

5. Having regard to the rate of income tax during the financial year 2011-2012, there would be a liability of income tax to the extent of Rs.10,000/-.

6. Given the age of the deceased at the time of the cause of action, 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 future prospects will have to be restricted to 15%. Thus, after deducting one-third towards personal and living expenses and applying the multiplier of 11, the loss of dependency is re-computed as (3,73,824/- (-) 10,000/- x $115/100 \times 2/3 \times 11$) Rs.30,68,249/- rounded off to Rs.30,69,000/-.

7. The non pecuniary awards also require to be brought in sync with dispensation in *Pranay Sethi* (supra). Thus, in lieu of amounts added by the tribunal Rs.40,000/- towards loss of consortium and Rs.15,000/- each for loss to estate and funeral expenses are added. The total compensation payable in the case is, thus, calculated as (30,69,000/- + 40,000/- + 15,000/- + 15,000/-) Rs.31,39,000/- (Rupees Thirty One Lacs Thirty Nine Thousand Only).

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

9. The apportionment of the award as directed by the tribunal shall be followed.

10. By order dated 18.12.2012 (on the file of MAC APP.1290/2012), the insurance company was directed to deposit 75% of the awarded amount with proportionate interest with the tribunal as a pre-condition to the stay of execution. The amount, thus, deposited was permitted to be released in the form of fixed deposit in favour of the claimants.

11. The insurance company will be obliged to satisfy the balance of its liability under the modified award by requisite deposit with the tribunal within thirty days, making it available to be released to the claimants.

12. The statutory amount deposited by the insurer will be refunded.

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

DECEMBER 12, 2017

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R.K.GAUBA, J.

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