$~R-485

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

Decided on: 15th November, 2017

\+ MAC APPEAL 382/2012

THE ORIENTAL INSURANCE COMPANY LTD. .. Appellant
Through: Mr. A.K. Soni, Advocate

versus

GEETA DEVI & ORS. ..... Respondents
Through: Mr. Amit Kumar Pandey, Advocate

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

<u>JUDGMENT (ORAL)</u>

1. Girish Chand @ Girish Chander, aged 39 years 10 months, employed in a salaried job with a private company, suffered death due to the injuries sustained in a motor vehicular accident that occurred on 19.08.2010 due to negligent driving of motor vehicle described as Trailer bearing registration no.HR-55-E-2170 admittedly insured against third party risk with the appellant (insurer).

2. On the accident claim case (suit no.159/2010) filed by his wife and five other members of the family dependent on him, they being first to sixth respondents (collectively, the claimants), the Motor Accident Claims Tribunal (Tribunal), by its judgment dated 04.01.2012, awarded compensation determined in the total sum of Rs.50,10,540/- directing the appellant (insurer of the offending vehicle) to pay with interest at the rate of 9% p.a., the said amount

inclusive of loss of dependency calculated at Rs.48,60,540/- on the income of Rs.24,110/- upon which the element of future prospects of increase to the extent of 40% was added and deduction to the extent of one-fifth made towards personal and living expenses, the multiplier of 15 having been adopted, this besides Rs.1,00,000/- towards loss of love and affection, Rs.25,000/- towards funeral expenses and Rs.25,000/- towards loss of consortium.

3. The insurer by the appeal at hand questions the inclusion of the element of future prospects to the extent of 40%. Given the fact that the claimants had proved that the deceased was in the regular employment of the company styled as SWAFE Business Processing Management Pvt. Ltd. and having regard to the age, in view of 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.*, such element of future prospects rather will have to be raised to the extent of 50%.

4. The contention of the insurer, however, about the deduction on account of personal and living expenses to the extent of one-fifth is correct. Since there are six defendants, such deduction will have to be to the extent of one-fourth [see *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121]*.

5. Therefore, the loss of dependency is re-computed as [Rs.24,110/- x 150/100 x 3/4 x 12 x 15] Rs.48,82,275/-, rounded off to Rs.48,83,000/- (Rupees Forty eight lakh and eighty three thousand only). Following the dispensation in *Pranay Sethi* (supra), however, non-pecuniary damages are restricted to Rs.15,000/- each towards loss

of estate and funeral expenses and Rs.40,000/- towards loss of consortium. Therefore, the total compensation in the case comes to [Rs.48,83,000/- + Rs.15,000/- + Rs.15,000/- + Rs.40,000/-] Rs.49,53,000/- (Rupees Forty nine lakh and fifty three thousand only). The award is modified accordingly. It shall carry interest as levied by the tribunal. Needless to add, Rs.50,000/- earlier paid as interim compensation will have to be adjusted.

6. It is noted that the tribunal had specified the amount falling to the share of the different claimants. By order dated 13.04.2012, the insurance company had been directed to deposit eighty percent (80%) of the awarded amount with up-to-date interest with the Registrar General and by a subsequent order dated 01.02.2013, fifty percent (50%) of the awarded amount was permitted to be released. Since the award has been reduced, it is directed that the amount already received by the claimants other than the widow (Geeta Devi) shall be treated as the amounts apportioned in their respective favour, the entire balance now to go to her only. The Registry shall release the balance of the amount payable to the first claimant under the modified award and refund the excess in deposit to the insurance company. Conversely, if there is further amount to be paid, the insurer shall be obliged to deposit it with the tribunal within 30 days making it available to be released to the claimant.

7. The statutory amount shall be refunded to the insurance company upon proof of satisfaction of award being submitted.

8. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 15, 2017/yg