$~R-486

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

Decided on: 15th November, 2017

\+ MAC APPEAL 384/2012 and CM 6604/2012 (stay)

THE ORIENTAL INSURANCE COMPANY LTD. ..... Appellant

Through: Mr. Pankaj Seth, Advocate

versus

ZAHID HASAN & ORS. ..... Respondents

Through: None

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

<u>JUDGMENT (ORAL)</u>

1. Musharraf Jahan, then aged 54 years, employed as a Teacher (TGT English) in a Government School, died as a result of the injuries suffered in a motor vehicular accident that occurred on 01.07.1999 due to negligent driving of truck bearing registration no.DL-1G-5967, admittedly insured against third party risk with the appellant (insurer). On the claim petition (suit no.737/2010/2002) instituted on 06.08.2002 by her husband (first respondent) and three children (second to fourth respondents), the Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 25.01.2012, granted compensation in the total sum of Rs.6,46,048/- directing the insurer to pay with interest at the rate of 9% p.a., the said amount inclusive of Rs.5,76,048/- towards loss of dependency, Rs.20,000/- towards funeral expenses,

Rs.75,000/- on account of loss of love and affection besides Rs.25,000/- for loss of consortium.

2. The insurer on which liability to pay was fastened, after adjusting the amount of Rs.50,000/- paid as interim compensation, by the present appeal, submits that the calculation is erroneous. The appeal was admitted and put in the list of 'Regular' matters by order dated 20.01.2016. When it is called out for hearing, there is no appearance for the claimants.

3. The learned counsel for the insurer has been heard. Record perused.

4. The evidence, as noted by the tribunal, would show that the deceased was earning Rs.14,545/- as monthly emoluments from the government service. The tribunal noted that the second claimant is son, aged 35 years, settled in his own life, the other claimants being married daughters and, therefore, being not dependent on the earnings of the deceased. It was, thus, primarily a claim for and on behalf of the first claimant (first respondent) husband only. It was also noted that after the death, the husband was in receipt of pension against the services rendered by the deceased with the government. The family pension would be half of the pension that the deceased would have earned in her own rights upon superannuation. The claimant appearing as his own witness (PW-1) admitted the amount of pension being in the sum of Rs.5,000/-. Thus, the loss of dependency will have to be calculated after deducting the said amount from the calculations. At the same time, given the age at which the death occurred, the job being permanent, the element of future prospects of increase to the

extent of 15% would have to be added as per 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*.

5. Since the claim was for loss of dependency of the husband, deduction on account of personal and living expenses to the extent of 50% deserves to be made.

6. Thus, the total compensation under the head of loss of dependency is worked out as [Rs.14,545/- (-) Rs.5,000/- x 115/100/2 x 12 x 11] Rs.7,24,465.5/-, rounded off to Rs.7,25,000/- (Rupees Seven lakh and twenty five thousand only).

7. The non-pecuniary damages awarded by the tribunal will also have to be brought in accord with the dispensation in *Pranay Sethi* (supra). Hence amounts of Rs.40,000/- for loss of consortium and Rs.15,000/- each for funeral expenses and loss to estate are added thereby raising the award to the total sum of [Rs.7,25,000/- + Rs.15,000/- + Rs.15,000/- + Rs.40,000/-] Rs.7,95,000/- (Rupees Seven lakh and ninety five thousand only).

8. In above view, the award instead of being decreased is liable to be increased. Ordered accordingly. The enhanced award shall also carry interest as levied by the tribunal. The entire enhanced portion with corresponding interest shall fall to the share of the first claimant (Zahid Hasan) husband.

9. By order dated 16.04.2012, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General. By order dated 07.11.2013, sixty percent

(60%) was permitted to be released. The balance shall also now be released to the claimants. The insurance company shall satisfy the enhanced portion of the award by requisite deposit with the tribunal within 30 days, making it available to be released to the claimant.

10. The statutory amount shall be refunded to the insurance company upon proof of deposit being furnished.

11. The appeal and the pending application are disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 15, 2017
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