$~R-496

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 16th November, 2017

\+ MAC.APP.442/2012

THE NEW INDIA ASSURANCE CO. LTD...... Appellant

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

versus

KHUSHBOO JHA ..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

<u>JUDGMENT (ORAL)</u>

1. Manish Jha, aged 27 years, employed in a private entity, died due to injuries suffered in motor vehicular accident that occurred on 19.01.2011 on account of negligent driving of motor vehicle described as one bearing registration no. DL 1PB 6680 which was admittedly insured against third party risk with the appellant (insurer) for the period in question. On the accident claim case (Suit No. 1/11) instituted on 16.03.2011 by his wife and four other members of the family dependent on him, they being first to fifth respondents (collectively the claimants) the tribunal, by judgment dated 02.03.2012, awarded compensation in the total sum of Rs. 12,91,760/-, fastening the liability to pay with interest @7.5% per annum against

the insurer which is in appeal to question the said computation of compensation.

2. The appeal was admitted and put in the list of regulars as per order dated 02.11.2012. When it is called out for hearing on its own turn, there is no appearance on behalf of the claimants. The appeal has been heard with the assistance of the learned counsel for the insurer and the record perused.

3. The counsel of the insurer presses the appeal only to argue that the element of future prospects of increase in income to the extent of 50% added against the income notionally assessed with minimum wages (Rs. 5,278/-) was incorrect and that the awards under non pecuniary heads of damages in the sum of Rs. 10,000/- each towards funeral expenses, loss of consortium and loss to estate; and Rs. 50,000/- towards loss of love and affection are excessive.

4. Having regard to the decision of the Constitution Bench of a Supreme Court rendered on 31.10.2017 in SLP (C) 25590/2014, *National Insurance Company Ltd. Vs. Pranay Sethi and Ors*., suitable corrections are required to be made.

5. Since the claimants were unable to prove the gainful employment of the deceased or the earnings therefrom and the tribunal was constrained to go by the minimum wages, the element of future prospects will have to be restricted to 40%.

6. Thus, the loss of dependency is recomputed as (5,278 x 140 ÷100 x 3 ÷ 4 x 12 x 17) Rs. 11,30,547.60 rounded off to Rs. 11,31,000/-. Following the dispensation in *Pranay Sethi* (supra) Rs. 40,000/- towards loss of consortium and Rs. 15,000/- each on account

of loss to estate and funeral expenses are added. Thus, the total compensation in the case is calculated as (11,31,000 + 40,000 + 15,000 + 15,000) Rs. 12,01,000/- (Rupees Twelve Lakhs One 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 percent) 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. By Order dated 27.04.2012, the insurance company had been directed to deposit the entire awarded amount with upto date interest with UCO Bank, Delhi High Court Branch. By subsequent order dated 02.11.2012, 50% of the awarded amount was permitted to be released to the claimants. The balance shall now be released to the claimants in terms of the modification ordered above. As the award has been reduced, the excess amount deposited shall be refunded to the appellant.

9. The statutory amount shall also be refunded.

10. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 16, 2017
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