$~R-506 & 507

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 16th November, 2017

\+ MAC.APP. 549/2012

IFFCO TOKIO GENERAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. Arihant Jain for Ms. Shantha Devi Raman, Adv.

versus

KANTI DEVI & ORS. ..... Respondent

Through: Mr. Jaswinder Singh, Adv. for UOI.

\+ MAC.APP. 30/2013

KANTI DEVI & ORS. ..... Appellants

Through: None.

versus

SUNIL KUMAR & ORS. ..... Respondents

Through: Mr. Arihant Jain for Ms. Shantha Devi Raman, Adv. for R-4.
Mr. Jaswinder Singh, Adv. for UOI.

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

JUDGMENT (ORAL)

1. Satish Chand Gupta, aged 50 years, earning his livelihood from private business, suffered injuries in a motor vehicular accident that

had occurred on 09.12.2006 due to negligence on the part of the driver of truck bearing registration no. BA 06C 080169A and died in the consequence. His wife and five other members of the family dependent on him (collectively, the claimants), they now being appellants in MAC Appeal No. 30/2013 and first to sixth respondents in MAC Appeal No. 549/2012, instituted accident claim case (suit no. 503/2011) on 11.04.2007 seeking compensation. The tribunal held inquiry and, by judgment dated 30.01.2012, accepted the case for compensation holding Sunil Kumar, the driver of the said truck (a respondent in these appeals) responsible for the accident. It awarded a total compensation of Rs. 6,95,200/- and fastened the liability on IFFCO Tokio General Insurance Company Ltd. (insurer), appellant in MAC Appeal No. 549/2010 and respondent in MAC Appeal 30/2013, to pay with interest @ 7.5% per annum. The compensation was calculated thus:-

S.No.	**Heads**	**Compensation**
1.	Loss of dependency	Rs. 6,55,200/-
2.	Funeral expenses	Rs. 10,000/-
3.	Loss of consortium	Rs. 10,000/-
4.	Loss of estate	Rs. 10,000/-
5.	Loss of love and affection	Rs. 10,000/-
	Total	Rs. 6,95,200/-

2. The insurer while contesting the said claim case had taken a plea that it could not be held liable to indemnify since the deceased

was travelling as a gratuitous passenger, his risk not being covered by the insurance policy. This plea was rejected by the tribunal with reference to admission of witness (R4W1) examined by the insurance company to the effect that such exclusion was not mentioned in the insurance document.

3. The claimants by their appeal submitted that the loss of dependency has not been properly determined and that the award is inadequate. *Per contra*, the insurance company argues that the element of future prospects of increase was wrongly added to the extent of 50%. The insurance company also raises a grievance that it should have been exonerated, pressing it on the ground that the vehicle was being unauthorizedly used for hire purposes.

4. Both the appeals were put in the list of 'regulars', to come up on their own turn. When they are taken up on their own turn, there is no appearance on behalf of the claimants.

5. The prime contention raised in the appeal of the claimants is that the income was wrongly taken notionally on the basis of minimum wages. It has been mentioned in the appeal that the claimants had proved by income tax return (ITR) for the assessment year 2004-05 (Ex.PW-1/3) which was wrongly rejected. Appraisal of the evidence led before the tribunal is found to be correct. The document (Ex.PW-1/3) proved by the claimants do reveal an income in the sum of Rs. 80,000/- which had been declared by the deceased during his lifetime on 18.03.2005 for AY 2004-05. This income could not be ignored. However, while taking the income of Rs. 80,000/-

mentioned in the said return, the income tax liability to the extent of Rs.1542/- deserves to be deducted.

6. Having regard to 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 element of future prospects of increase to the extent of 25% deserves to be added.

7. Thus, loss of dependency is recomputed as (80,000 -1542 x 125 ÷100 x 3 ÷4 x 13) Rs. 9,56,206.875, rounded off to Rs. 9,57,000/-.

8. The non-pecuniary awards also need to be brought in accord with the dispensation in *Pranay Sethi* (supra). Thus, in their lieu, Rs. 40,000/- towards loss of consortium and Rs. 15,000/- each towards loss to estate and funeral expenses are added.

9. Therefore, the total compensation comes to (9,57,000 + 40,000 + 15,000 + 15,000) Rs. 10,27,000/- (Rupees Ten Lakhs and Twenty Seven Thousand only). The award is modified accordingly.

10. Following the consistent view taken by this Court, the rate of interest is increased to 9% 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*.]

11. Having regard to the apportionment granted 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 exclusively to the share of Kanti Devi (widow), it to be released in the form of interest bearing fixed deposit account taken out from a

nationalized bank in her name for a period of seven years with right to draw periodic interest.

12. The plea of exoneration of the insurer cannot be accepted as the argument about the use of the vehicle for hire purposes is not founded on any evidence.

13. By order dated 16.05.2012 in MAC Appeal no.549/2012, the insurance company had been directed to deposit the entire awarded amount with upto date interest with UCO Bank. The amount thus deposited was directed to be put in interest bearing fixed deposit account. The said deposited amount shall now be released to the claimants in terms of the judgment of the tribunal. The insurance company will be obliged to deposit the enhanced amount in terms of the modification ordered above, with the tribunal within thirty days, making it available to be released to the first claimant (Kanti Devi).

14. The statutory amount shall be refunded only upon proof of the satisfaction of the award being furnished.

R.K.GAUBA, J.

NOVEMBER 16, 2017
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