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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 16th November, 2017

+ MAC.APP. 499/2012

NATIONAL INSURANCE CO. LTD. Appellant

Through: Mr. Pankaj Seth, Adv.

versus

PREM CHAND GUDIAL & ORS. Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Sachin Gudial, a bachelor, aged 24 years, earning his livelihood from a private employment died due to injuries sustained in motor vehicular accident that occurred on 05.06.2011, on account of negligent driving of motor vehicle described as Eicher Canter bearing registration no. HR 38Q 9198, admittedly insured against third party risk for the period in question with appellant (insurer). His parents, first and second respondents (collectively, the claimants) instituted accident claim case (Regn. no. 616/2011) on 05.07.2011 which was decided by the tribunal, by judgment dated 18.02.2012, awarding Rs. 17,06,400/- as compensation with interest @ 9% per annum, the liability having been fastened against the insurer.

2. The insurer presses the appeal to question the method of calculation of loss of dependency taking exception to the element of

future prospects of increase in income being added to the extent of 50%, submitting that in view of 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.*, this should have been restricted to 40%.

3. Having heard the learned counsel for the appellant, this Court finds no merit in the submission made. The mere fact that the deceased was in private employment would make no difference. The fact remains that he was in regular employment with the same employer since 2006. In these circumstances, the element of future prospects has to be added and it has been correctly factored in by the tribunal at 50%.

4. It is, however, noted that there is an error committed by the tribunal in choosing the multiplier of 13. Having regard to the ruling of the Constitution Bench in *Pranay Sethi* (supra), endorsing the earlier view taken in *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the multiplier has to be picked up according to the age of the deceased. Since the deceased was 24 years old, the multiplier of 18 would apply. It being the bounden duty of this Court to ensure that just compensation is awarded, the loss of dependency is recomputed on $(14,200 \times 150 \div 100 \times 1/2 \times 12 \times 18)$ Rs. 23,00,400/-, rounded off to Rs. 23,01,000/-.

5. It is noted that the tribunal had added Rs. 25,000/- towards funeral expenses, Rs. 20,000/- for loss of love & affection. This in view of *Pranay Sethi* (supra), would not be correct. Instead of the said

amounts, Rs. 15,000/- each towards loss to estate and funeral expenses are added.

6. Therefore, the total compensation in the case comes to (23,01,000 + 15,000 + 15,000) Rs. 23,31,000/- (Rupees Twenty Three Lakhs Thirty One Thousand only). The award is modified accordingly. It shall carry interest as levied by the tribunal.

7. It is directed that the enhanced portion of the award shall fall to the share of second respondent Rajo Devi (mother) alone, it to be released in her name in the form of fixed deposit account taken out from a nationalized bank for a period of seven years with right to draw periodic interest.

8. By order dated 07.05.2012, the insurance company had been directed to deposit the entire awarded amount with the claims tribunal within six weeks. By subsequent order dated 25.02.2013, 60% was permitted to be released to the claimants in terms of the judgment of the tribunal. Since the award has been increased, the balance lying in deposit shall also be released to the claimants. The insurance company will be obliged to satisfy the enhanced award by requisite deposit with the tribunal within thirty days, making it available to be released.

9. The statutory amount shall be refunded only after proof of the satisfaction of the award being furnished.

10. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 16, 2017/nk