$~R-510

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

Decided on: 20th November, 2017

\+ MAC APPEAL 574/2012

RELIANCE GENERAL INSURANCE CO. LTD. .... Appellant
Through: Mr. Pankaj Seth, Advocate

versus

JAGGAN & ORS. ..... Respondents
Through: None

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

<u>JUDGMENT (ORAL)</u>

1. Satish, aged 21 years, died in a motor vehicular accident that had occurred on 21.03.2009 due to the negligent driving of a motor vehicle described as Dumper bearing registration no.HR-55G-4213 admittedly insured against third party risk for the period in question with the appellant (insurer). The accident claim case (MAC petition no.534/2010) by his parents and wife, they being first to third respondents, instituted on 22.05.2009 was put to inquiry and, by judgment dated 08.02.2012, compensation in the total sum of Rs.8,88,200/- was awarded with interest at the rate of 7.5% p.a., the liability having been fastened on the insurer to pay.

2. The insurer presses the appeal at hand on the ground that the third respondent (widow) having re-married, her dependency could not have been considered. It also submits that since the income of the

deceased was assumed on the basis of minimum wages (Rs.3,950/-), the future prospects will have to be restricted to 40% instead of 50% as added by the tribunal.

3. The appeal was put in the list of regulars, to come up in its own turn, by order dated 08.04.2016. When it is called out in its turn, there is no appearance on behalf of the claimants.

4. The re-marriage of the widow took place 5-6 months after the death. The right to receive compensation had crystallized on the date the cause of action arose and, therefore, it is not correct to argue that the widow claimant should be kept out from consideration. Since on the date of accident, there were three claimants, deduction on account of personal and living expenses has been correctly made by the tribunal at one-third. Following the ruling of a 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 will, however, have to be restricted to 40% in the present case.

5. Thus, the loss of dependency is re-computed as [Rs.3,950/- x 140 /100 x 2 / 3 x 12 x 18] Rs.7,96,320/-, rounded off to Rs.7,97,000/- (Rupees Seven lakh and ninety seven thousand only).

6. It is noted that the tribunal has awarded Rs.10,000/- each towards loss to estate, loss of love and affection and loss of consortium besides Rs.5,000/- on account of funeral expenses. These awards also have to be brought in accord with the dispensation in *Pranay Sethi* (supra). Therefore, Rs.40,000/- is added towards loss of

consortium besides Rs.15,000/- each towards loss to estate and funeral expenses.

7. The total compensation consequently comes to [Rs.7,97,000/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/-] Rs.8,67,000/- (Rupees Eight lakh and sixty seven thousand only).

8. 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*.]

9. The award is modified accordingly.

10. The tribunal had specified the amounts falling to the share of each of the three claimants. Since the award has been modified, and slightly reduced, such dispensation will have to be made afresh. Keeping in view the facts and circumstances of the case, it is directed that 20% of the awarded amount shall fall to the share of the first claimant Jaggan (father) and the balance equally divided amongst the remaining two claimants with corresponding interest.

11. By order dated 21.05.2012, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the UCO Bank. The said amount was directed to be retained in fixed deposit receipt initially for a period of six months with provision for auto renewal. The Registry shall now calculate the amount payable to the claimants in terms of the modification ordered above and release the same accordingly to the claimants refunding the excess in deposit, if any, alongwith statutory deposit, to the insurance company.

12. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 20, 2017
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