

\$~R-471 & 472

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 13th November, 2017

+ MAC.APP. 297/2012

NATIONAL INSURANCE CO. LTD Appellant

Through: Mr. A.K. Soni, Adv.

versus

SATISH TIWARI & ORS Respondents

Through: Mr. Partap Singh, Adv. for R-1
& 2.

+ MAC.APP. 650/2012

SATISH TIWARI & ORS Appellant

Through: Mr. Partap Singh, Adv.

versus

MAHESH & ORS. Respondents

Through: Mr. A.K. Soni, Adv. for
insurance company/R-4.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Manorama Devi, suffered injuries in motor vehicular accident that occurred on 20.03.2011, due to negligent driving of motor vehicle described as Wagon-R bearing registration no. DL 2CAA 8383, admittedly insured against third party risk for the period in question with National Insurance Company Ltd. (appellant in MAC Appeal No.

297/2012) and died in the consequence. Her husband and son (appellants in MAC Appeal No. 650/2012) instituted accident claim case (suit no. 106/2011) on 27.04.2011 seeking compensation. The tribunal held inquiry and, by judgment dated 25.01.2012, accepted the case of death having occurred due to negligent driving of the insured vehicle. Compensation in the total sum of Rs. 10,60,000/- was awarded, it inclusive of Rs. 9,90,000/- towards loss of dependency, Rs. 50,000/- towards loss of love & affection and Rs. 10,000/- each towards funeral expenses and loss of consortium.

2. The liability to pay was fastened on the insurer, which is in appeal (MAC Appeal No. 297/2012) questioning the calculation of loss of dependency on the ground that in the evidence, copy of ration card (Ex. PW-1/29) proved at the inquiry showed the year of birth of deceased as 1964 and, therefore, the deceased was 46 years old at the relevant date for which reason the multiplier of 13 should have been invoked. The insurer also submits that deduction on account of personal & living expenses should have been to the extent of 50%, since the claimant Anoop Tiwari (son) was major and was self-employed. Exception is also taken by the insurer to the inclusion of future prospects to the extent of 50%.

3. *Per contra*, the claimants by their appeal (MAC Appeal No. 650/2012) argued that the income should have been taken as 6,500/- per month since the evidence also showed that the deceased was earning additional income from tuitions.

4. During the pendency of these appeals, the second claimant Anoop Tiwari (son) died on 31.08.2015. Application (CM No.

29063/2016) had been filed on the record of MAC Appeal No. 297/2012 seeking substitution of his legal representatives. The said application was allowed by order dated 18.05.2017.

5. At the hearing on these appeals, it has been submitted by the counsel representing the claimants that inadvertently similar application could not be filed on record of MAC Appeal No. 650/2012. Since both the appeals arise out of the same claim petition, the order passed on 18.05.2017 in MAC Appeal No. 297/2012 substituting the legal heirs of second claimant is directed to govern both the matters.

6. During the hearing the learned counsel for the claimants fairly conceded that given the evidence in the nature of copy of ration card (referred to above) the age of the deceased may be taken as 46 years on the relevant date and, consequently, the multiplier of 13 invoked. He fairly conceded that given the evidence and the educational qualifications of the deceased (12th pass), the income on which the loss of dependency is to be calculated may be restricted to salary of Rs. 5,500/-. Having regard to 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 of increase will have to be restricted to 25%.

7. The evidence does show that the son Anoop Tiwari (since deceased) was major and well-settled in life. In these circumstances, he could not be treated as dependent on deceased. For these reasons

the deduction on account of personal & living expenses will have to be taken to the extent of 50%.

8. In the foregoing facts and circumstances, the loss of dependency is recomputed as $(5,500 \times 125 \div 100 \times 1/2 \times 12 \times 13)$ Rs. 5,36,250/-, rounded off to Rs. 5,37,000/-.

9. It is necessary to bring the non-pecuniary damages in accord with the dispensation in *Pranay Sethi* (supra). Hence, the amount of Rs. 40,000/- towards loss of consortium, Rs. 15,000/- each on account of loss to estate and funeral expenses are added.

10. Thus, the total compensation comes to $(5,37,000 + 40,000 + 15,000 + 15,000)$ Rs. 6,07,000/-. The award is modified accordingly. It shall carry interest as levied by the tribunal.

11. By order dated 21.03.2012, in MAC Appeal No. 297/2012, the insurance company had been directed to deposit 75% of the awarded amount with upto date interest with the Registrar General. By subsequent order dated 01.06.2012, 80% of the deposited amount was permitted to be released to the claimants.

12. The tribunal had specified the amounts falling to the share of the two claimants. Since the award has been modified, fresh directions in such regard are called for.

13. In the facts and circumstances, the amount already received by the second claimant (now represented by his legal heirs) will be treated as the amount apportioned in his favour. The entire balance shall go to the share of the first claimant (husband) alone. The registry shall calculate the amount payable under the modified award and release the same to the claimant refunding the excess in deposit, if

any, to the insurance company. Conversely, if there is deficiency in amount deposited, the insurance company will be obliged to take necessary steps by requisite deposit with the tribunal within thirty days. On the other hand, if excess has been released, the claimants will be obliged to reimburse the same to the insurance company.

14. The statutory amount made by the insurance company shall be refunded.

15. Both appeals are disposed of in above terms.

NOVEMBER 13, 2017

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R.K.GAUBA, J.



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