$~R-514 & 515

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

Decided on: 20th November, 2017

\+ MAC APPEAL 604/2012 and CM 9895/2012

ORIENTAL INSURANCE COMPANY LTD. ..... Appellant
Through: Mr. Pankaj Seth, Advocate

versus

SUMAN DEVI & ORS. ..... Respondents
Through: Mr. O.P. Mannie, Adv for R-1 to 7

\+ MAC APPEAL 840/2012

SUMAN DEVI AND ORS. ..... Appellants
Through: Mr. O.P. Mannie, Advocate

versus

MAHAVIR SINGH & ORS. ..... Respondents
Through: Mr. Pankaj Seth, Advocate for R-3 /insurance company

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

JUDGMENT (ORAL)

1. Ram Parvesh Pandit, then aged 43 years, earning his livelihood from a private cycle repair shop, suffered injuries in a motor vehicular accident that had occurred on 15.08.2010 due to the negligent driving of a motor vehicle described as a tanker bearing registration no.DL-1GB-6954 and died in the consequence. The vehicle was admittedly

insured against third party risk with Oriental Insurance Company Ltd. (appellant in MACA 604/2012). On the accident claim case (case no.627/2010) instituted on 24.09.2010 by the wife and six other members of the family dependent on him (appellants in MACA 840/2012), the tribunal awarded compensation in the total sum of Rs.12,29,045/- and fastened the liability on the insurer to pay with interest at the rate of 7.5% per annum.

2. The claimants are in appeal to seek enhanced compensation and press it only on the grounds that deduction of one-fifth towards personal and living expenses was inappropriate given the fact that there were seven dependents and that the income should have been assessed at a higher level. The claimants also seek an enhanced rate of interest.

3. On the other hand, the insurer by its appeal questions the addition of future prospects of increase to the extent of 50% against income notionally assessed with the help of minimum wages (Rs.5,278/-).

4. No clear proof of the earnings of the deceased was mustered. In these circumstances, mere oral word that he was earning Rs.15,000/- p.m. cannot be accepted and has been rightly rejected by the tribunal. The minimum wages, however, could not have been improved upon with the help of future prospects to the extent of 50%. Having regard to the age at which the death occurred and following the principles laid down by a Constitution Bench of the Supreme Court on 31.10.2017 in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors.*, the said factor will have to be restricted to

25%. The loss of dependency is thus re-computed as [Rs.5,278/- x 125/100 x 4/5 x 12 x 14] Rs.8,86,704/-, rounded off to Rs.8,87,000/- (Rupees Eight lakh and eighty seven thousand only).

5. It is pointed out by the insurer that the tribunal has awarded Rs.50,000/- towards funeral charges, Rs.1,00,000/- towards loss of love and affection, Rs.10,000/- for loss of consortium and Rs.5,000/- towards loss to estate. In view of the ruling in *Pranay Sethi* (supra), only Rs.40,000/- towards loss of consortium and Rs.15,000/- each towards loss to estate and funeral expenses being permissible are added in their lieu.

6. Thus, the total compensation in the case comes to [Rs.8,87,000/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/-] Rs.9,57,000/- (Rupees Nine lakh and fifty seven thousand only). The award is modified accordingly.

7. 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*.]

8. By order dated 28.05.2012 in MACA 604/2012, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with UCO Bank, Delhi High Court branch and from out of such deposit, sixty percent (60%) was permitted to be released to the claimants, the balance kept in interest bearing fixed deposit receipt. The Registry shall now calculate the remaining amount payable to the claimants and release the same, refunding the excess in deposit to the insurance company.

9. The statutory amount shall be refunded to the insurance company.

10. Both appeals and the pending application stand disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 20, 2017

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