$~R-549

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

Decided on: 23rd November, 2017

\+ MAC APPEAL 767/2012

VISHAMBHAR & ANR ..... Appellants

Through: Mr. S.N. Parashar and Ms. Pankaj Kumari, Advocates

versus

UDAY BHAN YADAV & ORS. ..... Respondents

Through: Mr. Shoumik Mazumdar, Adv. for R-3

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

JUDGMENT (ORAL)

1. Pinto, a bachelor, aged 19 years, suffered injuries in a motor vehicular accident that occurred on 10.07.2007 due to negligent driving of a motor vehicle described as Crane bearing registration no.HR-55-F-2193 admittedly insured against third party risk with the third respondent (insurer) for the period in question and died in the consequence. On the accident claim case (MACT 446/10/07) instituted on 18.08.2007 by his parents (appellants), the Motor Accident Claims Tribunal (Tribunal) held inquiry and awarded Rs.4,82,000/- as compensation with interest at the rate of 7.5% p.a. fastening the liability on the insurer to pay. The said amount includes Rs.4,32,000/- towards loss of dependency, Rs.10,000/- for funeral and

transportation charges, Rs.20,000/- each for loss to estate and loss of company. The loss of dependency has been calculated on the assumed income of Rs.4500/- p.m., the multiplier of 16 having been invoked.

2. By the appeal at hand, the claimants seek enhancement submitting that the multiplier should have been taken as 18, according to the age of the deceased and the element of future prospects of increase in income should have been added. The request also is made for increase in the award under the non-pecuniary heads of damages and the rate of interest.

3. *Per contra*, the counsel for the insurer points out that the finding on the issue of income at Rs.4500/- is unfounded, there being no credible evidence led to support the same. The counsel for the claimants fairly submits that minimum wages of Rs.3470/- p.m. be taken as the notional income. The element of future prospects of increase in income, however, to the extent of 40% deserves to be added in view of 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.* Further the multiplier of 18 has to be invoked according to the age of the deceased.

4. The loss of dependency is, thus, re-computed as [Rs.3,470/- x 140/100 x 1/2 x 12 x 18] Rs.5,24,664/-, rounded off to Rs.5,25,000/-.

5. Following the ruling in *Pranay Sethi* (supra), the non-pecuniary heads of damages as awarded by the tribunal cannot be approved. An amount of Rs.15,000/- each under the heads of loss to estate and funeral expenses are added. Thus, the total compensation in the case

comes to [Rs.5,25,000/- + Rs.15,000/- + Rs.15,000/-] Rs.5,55,000/- (Rupees Five lakh and fifty five thousand only).

6. Following the consistent view taken by this Court, the rate of interest is increased to 9% (nine percent) 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*.]

7. Having regard to the dispensation already made in favour of the first appellant, it is directed that the entire enhanced portion of the award including the effect of increase in the rate of interest shall fall to the share of the second appellant (Dewanti) / mother, it to be released to her in the form of an interest bearing fixed deposit receipt taken out from a nationalized bank for a period of seven years with right to draw periodic interest. The insurer is directed to satisfy the enhanced award by requisite deposit with the tribunal within 30 days making it available to be released to the claimant.

8. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 23, 2017
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