

\$~R-702

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

Decided on: 12th December, 2017

+ MAC APPEAL 1302/2012

DEEPIKA & ORS. Appellant

Through: Mr. S.N. Parashar, Advocate

versus

SEHAJ RAM & ORS. Respondents

Through: Mr. Sameer Nandwani, Adv. for
R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Golty Saluja, then aged 32 years, earning his livelihood from business, suffered injuries in a motor vehicular accident that had occurred on 24.02.2011, due to negligent driving of a motor vehicle described as Tata tempo bearing registration no.HR-46A-8927, admittedly insured against third party risk with the third respondent (insurer) for the period in question and died in the consequence.

2. In the accident claim case (115/11), instituted on 24.03.2011, by his wife and two other members of the family dependent on him, the Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 20.10.2011, awarded compensation in the total sum of Rs.29,31,900/-, directing the insurer to pay with interest at the rate of 7.5% p.a. The insurer has taken the plea of breach of terms and conditions of the insurance policy on the ground that the first

respondent (driver) of the offending vehicle was not holding a valid driving licence. This plea was accepted and thus the insurer was granted recovery rights against the first and second respondent.

3. By the appeal at hand, the claimants seek enhanced compensation. The prime grievances are that the element of future prospects of increase in income was not granted and that the non-pecuniary heads of damages and the rate of interest levied are low.

4. The tribunal's record would show that the claimant had submitted income tax returns (ITRs) for three assessment years (AYs), they being 2007-2008, 2008-2009 and 2009-2010 (Ex. PW1/8, PW1/7 and PW1/6 respectively). The last ITR for the assessment year 2009-2010 indicated total income from business to be Rs.2,71,582/-. The tribunal declined to grant any benefit of future prospects of increase in income for the reason, the ITRs showed income which was fluctuating. 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.*, such reasons cannot hold good. The benefit of future prospects to the extent of 40% will have to be factored in.

5. The loss of dependency, on the multiplier of 16 (age of the deceased being 32 years) and after deduction of one-third towards personal and living expenses (claimants being three in number) is thus re-computed as $[Rs.2,71,582/- \times 140/100 \times 2/3 \times 16]$ Rs.40,55,624.53, rounded off to Rs.40,56,000/-.

6. The non-pecuniary damages awarded by the tribunal in the sum of Rs.10,000/- each for loss of estate, loss of consortium and loss of

love and affection and Rs.5,000/- for funeral expenses need to be revised. In their lieu, as per ruling in *Pranay Sethi* (supra), Rs.40,000/- towards loss of consortium, Rs.15,000/- each for loss of estate and funeral expenses are added.

7. Thus, the total compensation comes to [Rs.40,56,000/- + Rs.40,000/- + Rs.15,000/- +Rs.15,000/-] Rs.41,26,000/- (Rupees Forty one lakh and twenty six thousand only). The award is modified accordingly.

8. 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.*]

9. The insurer is directed to satisfy the enhanced award by requisite deposit with the tribunal within 30 days. The entire amount now payable including on account of increase in the rate of interest will fall to the share of the first claimant (Deepika alone), it to be released to her in the form of interest bearing fixed deposit receipt taken out from a national bank for a period of ten years with right to draw periodic interest.

10. The appeal is disposed of in above terms.

11. Nothing in this judgment, shall affect the recovery rights granted to the insurer.

R.K.GAUBA, J.

DECEMBER 12, 2017/yg