$~R-544-546

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 22nd November, 2017

\+ MAC.APP. 757/2012

SMT. LALITA DEVI & ORS. ..... Appellants

Through: Mr. S.N. Parashar, Adv.

versus

SH. MUKESH KUMAR & ORS. ..... Respondents

Through: Mr. Sameer Nandwani, Adv.

\+ MAC.APP.842/2012

NEW INDIA ASSURANCE CO.LTD. .....Appellant

Through: None.

versus

SHAILENDRA KUMAR & ORS. ....Respondents

Through: Mr. S.N. Parashar, Adv.

\+ MAC.APP. 843/2012

NEW INDIA ASSURANCE CO.LTD. .....Appellant

Through: Mr. Sameer Nandwani, Adv.

LALITA DEVI & ORS. .....Respondents

Through: Mr. S.N. Parashar, Adv.

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

JUDGMENT (ORAL)

1. On 19.03.2010, a motor vehicular accident took place involving negligent driving of motor vehicle described as tempo bearing

registration no. DL-1LE-7450 which was admittedly insured against third party risk with the appellant (insurer) for the period in question, it resulting in Avdhesh Kumar and Shailendra Kumar suffering injuries, the former (Avdhesh Kumar) having died in the consequence.

2. Two accident claim cases were filed, one MACT No. 1301/10 instituted by the wife and four other members dependent on the deceased Avdhesh Kumar, they being collectively claimants and the appellants in MACA No.757/2012 and the other (MACT No. 423/10) by Shailendra Kumar. Both the cases were clubbed for inquiry. The tribunal by common judgment dated 28.04.2012, decided the said claim cases, holding the tempo driver responsible for the accident. In the death case, the tribunal awarded Rs.9,05,036/- as total compensation, it inclusive of Rs.8,55,036/- towards loss of dependency, Rs.25,000/- towards loss of love and affection, Rs.10,000/- towards loss of estate and Rs.5,000/- towards loss of funeral expenses. The liability to pay the said compensation has been fastened on the insurer with interest of 7.5% per annum.

3. The insurer by its appeals (MACA No. 842/2012 and MACA No. 843/2012) challenges the awards in both the cases, on the ground that the victims were employees of the owner of the offending vehicle and, therefore, compensation in their case should have been determined, not under Motor Vehicles Act, 1988 but in terms of Employees' Compensation Act, 1973.

4. On the other hand, the claimants in the death case have come up in appeal (MACA No. 757/2012) seeking enhanced compensation on the ground that the element of future prospects of increase in income was not included, also pointing out that the non-pecuniary damages awarded and the rate of interest levied were inadequate.

5. In view of the ruling of 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 prospect of increase to the extent of 40% is to be factored in while calculating the loss of dependency due to the death of Avdhesh Kumar.

6. Thus, the loss of dependency is re-computed as (5275x140/100x3/4x12x18) Rs.11,96,370/- rounded off to Rs.11,97,000/-.

7. To bring the award of non-pecuniary damages in accord with the dispensation in *Pranay Sethi's* (supra), it is directed that instead of the awards granted by the tribunal, Rs.40,000/- towards loss of consortium and Rs.15,000/- each under the heads of loss of estate and funeral expenses be added.

8. Thus, the total compensation on account of death of Avdhesh Kumar is recomputed as (11,97,000/-(+)40,000/-(+)15,000/-(+)15,000/-) Rs.12,67,000/- (Rupees Twelve Lakhs and Sixty Seven Thousand Only). The award is modified accordingly.

9. 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*.]

10.The contention of the insurer to the above effect is rejected by reference to the provision contained in Section 167 of Motor Vehicles Act, 1988. The claimants having chosen to claim compensation under the Motor Vehicles Act, 1988, they cannot be denied just compensation determined thereunder.

11. By order dated 03.01.2013 in each appeal of the insurance company, it had been directed to deposit the entire awarded amount(s) and out of which 50% was permitted to be released to the respective claimants. The registry shall now release the balance lying in deposit with accrued interest to the respective claimants in each case.

12. In terms of modification ordered above, the insurance company will be obliged to pay further amounts in the death case. It is directed to do so by requisite deposits with the tribunal within 30 days. It is, however, directed that the entire enhanced portion of the award with corresponding interest in the death case shall be paid to Lalita Devi (widow) only. It shall be released to her in the form of fixed deposit receipts taken out from a Nationalised bank for a period of seven years with right to draw periodic interest.

13. The statutory amounts shall be refunded after proof of the awards having been satisfied is shown.

14. These appeals are disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 22, 2017
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