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

Decided on: 18th September, 2017

+ MAC.APP. 446/2010

RELIANCE GENERAL INSURANCE COMPANY LTD

..... Appellant

Through: Mr. Arun Yadav, Advocate

Versus

SUMITRA DEVI & ORS.

..... Respondents

Through: Mr. Anshuman Bal, Advocate for R-1
to R-5.

Mr. S.N. Parashar, Advocate with
Ms. Pankaj Kumari, Advocate for R-6
& R-7.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The accident claim case (MACT No.796/2008/07) was instituted on 03.11.2007 by first to fifth respondents (collectively, the claimants) seeking compensation on account of death of Azad Singh in a motor vehicular accident that occurred on 21.09.2007 at about 6:45 a.m., due to negligent driving of Tata truck bearing registration No.HR-63-1592 (the truck), admittedly insured against third party risk with the appellant insurance company (insurer) for the period in question. The tribunal held inquiry and, by judgment dated 07.05.2010, accepted the said claim for compensation holding the

truck driver Sanjay Kumar (sixth respondent) responsible for the accident. The tribunal also held Rajbir Singh (seventh respondent) liable, he being the registered owner of the truck. It determined compensation in the total sum of Rs.29,43,440/-, fastening the liability on the insurer to pay, it being liable to indemnify the registered owner, interest of seven per cent (7%) per annum having been levied with further direction that in case the payment was not made within thirty days, the interest would stand enhanced to 12% per annum from 08.06.2010 till realization.

2. The insurance company presses its appeal to question that the loss of dependency has not been properly worked out, in that the element of future prospects of increase to the extent of 30% was added. The insurance company also submits that the penal interest @ 12% per annum was unnecessary. The appellant further submits that since the registered owner had not come up with any proof of there being a valid permit in spite of notice under Order XII Rule 8 of the Code of Civil Procedure, 1908 (CPC), it should have been exonerated or at least granted recovery rights.

3. *Per contra*, the claimants submit that the non-pecuniary damages awarded are inadequate. The learned counsel representing the registered owner argues that no evidence was led by the insurance company to prove the breach of terms and conditions of the insurance policy.

4. The submission of the insurance company taking exception to the element of future prospects of increase in income cannot be

accepted in view of clear evidence that the deceased was in regular employment of Indian Airlines. Given the nature of job in which he was engaged, it is inherent in the terms and conditions of the service that his salary would rise progressively.

5. The grievance of the claimants about inadequacy of non-pecuniary damages is found to be correct. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, compensation in the sum of Rs.1,00,000/- each on account of loss of love & affection and loss of consortium and Rs.25,000/- each towards loss of estate and funeral expense are added. This would mean there has to be net increase in the award in the sum of (Rs.2,50,000 - 20,000) Rs.2,30,000/- (Rupees Two Lakhs Thirty Thousand Only). Ordered accordingly.

6. The enhanced portion of the award shall carry interest @ nine per cent (9%) per annum from the date of filing of the petition till realization.

7. It is noted that the tribunal has not given any special reasons for imposing the penal rate of interest in the event of default. The insurer approached this court in appeal immediately after the award was passed by the tribunal and, thereafter, the payment has been regulated in terms of the interim directions of this court. In this view, the directions of the tribunal about the default penal interest @ twelve per cent (12%) per annum are set aside.

8. The insurance company had not led any evidence before the tribunal. Thus notice under Order XII Rule 8 CPC to which the reference is being made was not part of the evidence on which the tribunal was expected to render its decision. Such defence cannot be raised in the air. The plea being unfounded is rejected.

9. It is directed that the said enhanced portion with corresponding interest shall fall to the share of the first respondent (Sumitra Devi) (widow), it being released in her favour in the form of interest bearing fixed deposit receipt, to be taken out from a nationalized bank for a period of seven years with right to draw periodic interest.

10. By order dated 22.07.2010, the operation of the impugned award was stayed, subject to the appellant depositing the entire awarded amount with interest with the tribunal. From out of the said deposit, part thereof was allowed to be released to the claimants. The balance held back shall also now be released to the claimants.

11. The insurance company is directed to satisfy its enhanced liability by requisite deposit with the tribunal within thirty days.

12. The statutory deposit made by the insurance company is forfeited as costs to be made over to the Delhi High Court Legal Services Committee.

13. The appeal is disposed of in above terms.

R.K.GAUBA, J.

SEPTEMBER 18, 2017

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