$~R-531

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 21st November, 2017

\+ **MAC.APP.715/2012 and CM APPL. 11671/2012**

RELIANCE GENERAL INSURANCE CO LTD ..... Appellant
Through: Mr. Arun Yadav, Advocate.

versus

REENA DEVI AND ORS ..... Respondents
Through: None.

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

JUDGMENT (ORAL)

1. While granting compensation, by judgment dated 02.05.2012, in accident claim case (MACT Case No. 318/10/08) instituted on 16.10.2008 by first to fourth respondents (collectively, the claimants) on account of death of Amarjeet Pandey in a motor vehicular accident that took place on 25.08.2008, the Tribunal added Rs.10,000/- towards funeral charges, Rs.1 lakh each towards loss to estate and loss of love and affection and Rs.50,000/- for loss of consortium besides Rs.50,000/- for counsel fee which are questioned by the insurer in this appeal, the liability having been fastened on it since it had concededly issued a policy covering third party risk in respect of the offending vehicle.

2. In view of the decision of the Constitution Bench of Supreme Court rendered on 31.10.2017 in *SLP (C) 25590/2014, National*

Insurance Company Ltd. Vs. Pranay Sethi and Ors., the non-pecuniary damages as awarded by the Tribunal cannot be sustained. In their lieu, Rs.40,000/- towards loss of consortium and Rs.15,000/- each towards loss of estate and funeral expenses are added. The loss of dependency calculated by the Tribunal is Rs.8,45,300/-. Thus, the total compensation is reduced to Rs. (8,45,300+40,000+15,000+15,000) Rs.9,15,300/- rounded off to Rs.9,16,000/- (Rupees Nine Lakhs Sixteen Thousand Only).

3. There being no justification for said award, the direction for payment of counsel fee in the sum of Rs.50,000/- is set aside.

4. The award is modified accordingly. It shall carry the interest as levied by the Tribunal.

5. It is noted that the Tribunal had apportioned the award by specifying the amounts. Having regard to the fact that the award has been reduced, it is directed that 70% of the awarded amount shall be released as share of the widow Reena Devi, the balance being equally distributed amongst the three other claimants. Needless to add, the interest as levied by the Tribunal shall also be paid along with the said modified award.

6. By order dated 12.12.2014, the insurance company had been directed to deposit the entire amount with the Registrar General and 40% of such amount was permitted to be released. By subsequent order dated 21.04.2017, an amount of Rs.5 lakhs was released.

7. The Registry shall now calculate the amount payable to the claimants under the modified award and release the balance to the claimants refunding the excess, if any, in deposit to the insurance

company. Conversely, if any excess amount has been paid to the claimants, they would be liable to refund the same to the insurance company.

8. The statutory amount shall be refunded.

9. The appeal and the pending application stand disposed of.

R.K.GAUBA, J.

NOVEMBER 21, 2017
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