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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 9th November, 2017

\+ MAC.APP. 292/2016

SHRI RAM GENERAL INSURANCE CO. LTD.

..... Appellant

Through: Mr. Sameer Nandwani, Adv.

Versus

POONAM & ORS. ..... Respondents

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

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

<u>JUDGMENT (ORAL)</u>

1. By judgment dated 22.12.2015, nine claim cases were decided arising out of the same accident by the tribunal. On the claim case (MACT 52/2011) of the first to sixth respondents (collectively, the claimants), it awarded an amount of Rs. 16,93,795/- as compensation on account of death of Tarash Kumar @ Vipin Kumar in motor vehicular accident that took place on 21.12.2010, due to negligent driving of tanker bearing registration no. HR 55 2626, admittedly insured against third party risk with the appellant (insurer). The liability to pay the said amount has been fastened on the insurer though its plea of breach of terms and conditions of the insurance policy having been accepted, it has been granted recovery rights against the owner of the said vehicle (eighth respondent).

2. The only ground pressed at the hearing relates to inclusion of non-pecuniary damages in the total sum of Rs. 6,25,000/-, it inclusive of Rs. 4,00,000/- towards loss of love & affection, Rs.1,00,000/- each towards loss of consortium and loss of estate and Rs. 25,000/- on account of funeral expenses. Reliance is placed on decision dated 31.10.2017 of a Constitution Bench of the Supreme Court in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors.*

3. The learned counsel for the claimants fairly concedes that in view of the dispensation in *Pranay Sethi* (supra), the amounts of non-pecuniary damages awarded by the tribunal cannot be sustained. Instead of the amounts granted by the tribunal as above Rs. 40,000/- towards loss of consortium and Rs. 15,000/- each towards loss of estate and funeral expenses are added. Thus, the compensation is to be reduced by (6,25,000 – 70,000), Rs. 5,55,000/-.

4. The compensation in favour of the claimants is consequently reduced to (16,93,795- 5,55,000) Rs. 11,38,795/- rounded off to Rs.11,39,000/- (Rupees Eleven Lakh Thirty Nine Thousand Only). The award is modified accordingly. It shall carry interest as levied by the tribunal.

5. By order dated 07.04.2016, the insurer had been directed to deposit the entire awarded amount with upto date interest with the tribunal within thirty days and was directed to be put in interest bearing fixed deposit account for a period of one year with provision for auto renewal and from out of such deposit, 50% was permitted to

be released to the claimants. The tribunal shall calculate the balance amount payable to the claimants in terms of the modification ordered above, and release the same to the claimants from the amount deposited, refunding the excess, if any, to the insurance company.

6. The statutory amount shall be refunded.

7. The appeal is disposed of in above terms.

8. This judgment does not disturb the recovery rights granted to the insurer.

R.K.GAUBA, J.

NOVEMBER 09, 2017
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