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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 15th November, 2017

+ MAC.APP. 385/2016

FUTURE GENERALI INDIA INSURANCE CO. LTD.

..... Appellant

Through: Mr. Navneet Kumar & Mr.
Vikas Bhadana, Advs.

versus

JAIRAM RAM & ORS.

..... Respondents

Through: Mr. Pratap Singh & Mr. Sunil,
Advs. for R-1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Dina Nath, aged about 23 years, a bachelor, suffered injuries in motor vehicular accident that occurred on 19.01.2014 due to negligent driving of motor vehicle described as Tempo bearing registration no. DL-1LQ-8105, admittedly insured against third party risk with the appellant (insurer) and died in the consequence. On the accident claim case (Petition No. 116/14) instituted, by his parents and sibling, on 29.04.2014, the tribunal held inquiry and, by judgment dated 04.01.2016, awarded compensation in the total sum of Rs. 14,45,000/- calculating it thus:-

S.No.	Heads	Compensation
1.	Loss of dependency	Rs. 13,10,000/-
2.	Loss of love & affection	Rs. 1,00,000/-
3.	Funeral expenses	Rs. 25,000/-
4.	Loss of estate	Rs. 10,000/-
	Total	Rs. 14,45,000/-

2. The liability to pay compensation with interest @ 9% per annum was fastened against the insurer which is in appeal questioning the calculation of loss of dependency and non-pecuniary heads.

3. The tribunal noted that the claimants had not mustered evidence about any clear proof of earnings of the deceased and, therefore, adopted the minimum wages for 'unskilled person' of Rs.8086/- as the benchmark, adding the future prospects of increase in income to the extent of 50% and deducted 50% towards personal & living expenses and applied the multiplier of 18 according to the age of the deceased.

4. Having regard to 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.*, in such a case, the future prospects will have to be restricted to 40%. There is no error in the adoption of the multiplier, in view of the ruling of the Supreme Court in *Pranay Sethi* (supra), endorsing the view taken in *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121.

5. Thus, the loss of dependency is recalculated as $(8086/- \times 140/100 \times 1/2 \times 12 \times 18)$ Rs.12,22,603.20, rounded off to Rs.12,23,000/-.

6. Following the dispensation in *Pranay Sethi* (supra), the non-pecuniary damages also need to be modified. The amount of Rs. 15,000/- each towards loss to estate and funeral expenses are added. Thus, the total compensation comes to $(12,23,000 + 15,000 + 15,000)$ Rs. 12,53,000/- (Rupees Twelve Lakhs Fifty Three Thousand only). The award is modified accordingly.

7. There is no error in the levy of interest @ 9% per annum which is in accord with dispensation consistently made by this Court. The tribunal apportioned the award equally amongst the parents. The said dispensation shall be followed *vis-a-vis* the modified award.

8. By order dated 06.05.2016, the insurance company had been directed to deposit the entire awarded amount with interest with the tribunal and out of such deposit 40% was permitted to be released to the claimants. The tribunal shall calculate the balance payable to the claimants in terms of the modification ordered above and release the same to the claimants. The excess amount deposited shall be refunded to the appellant.

9. The appeal is disposed of in above terms.

10. The statutory amount shall be refunded to the appellant.

R.K.GAUBA, J.

NOVEMBER 15, 2017

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