

\$~R-550 & 551

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 23rd November, 2017

+ **MAC.APP.780/2012**

NEW INDIA ASSURANCE CO LTD

..... Appellant

Through: Mr. Priyadarsi Acharya, Advocate

versus

RAGINI CHAUDHARY & ORS

....Respondents

Through: None.

+ **MAC.APP.996/2012**

RAGINI CHAUDHARY & ANR

..... Appellants

Through: None.

versus

NEW INDIA ASSURANCE CO LTD & ORS

....Respondents

Through: Mr. Priyadarsi Acharya, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Ranjit Kumar Chaudhary, then aged 33 years, suffered injuries in a motor vehicular accident that occurred on 17.10.2004, due to negligent driving of motor vehicle described as truck bearing registration No. HR-38J-9901 and died in the consequence. His wife and minor son (collectively, the claimants) instituted accident claim

case (MACT Suit No. 913/08) on 30.08.2005, alleging that the accident had occurred due to negligence on the part of Rahishuddin (the driver). The Tribunal held inquiry and, by judgment dated 20.04.2012, accepted the said case holding the said driver responsible. It was found that the truck was insured against third party risk with New India Assurance Co. Ltd. (the insurer) for the period in question at the instance of its owner Arshad Ali. Holding the driver and the owner jointly and severally liable, the insurer was called upon to pay the compensation which was determined in the sum of Rs.42,49,000/-, it inclusive of Rs.42,24,000/- towards loss of dependency, Rs.5000/- towards funeral expenses and Rs.10,000/- each for love and affection and under the head of loss of estate. The Tribunal also levied interest at the rate of 7.5% per annum.

2. The insurer, by the appeal at hand, has questioned the calculation of loss of dependency on the ground that the Tribunal fell into error by accepting the word of claimant Ragini Chaudhary (PW-1) about the income of the deceased being in the sum of Rs.22,000/- per month. *Per contra*, the claimants by their appeal submitted that the rate of interest should have been awarded to the extent of 12% per annum and deduction on account of personal expenses should have been made up to 1/4th only.

3. Both the appeals were put in the list of “Regulars” to come up in their own turn by order dated 25.01.2016. When they are called out for hearing, there is no appearance on behalf of the claimants. The counsel for the insurer has been heard and, with his assistance, the record has been perused.

4. It does appear that the deceased was not in a regular employment but his widow (PW-1) proved by her evidence (PW-1) that he was a well qualified person holding a degree of Bachelor of Chemical Engineering besides diploma certificates in Software Programming and Financial Management. He was earning his livelihood as a freelance computer software programmer. The testimony of Pradeep Kumar Tyagi (PW-2), Arun Kumar Panikar (PW-3) and Santosh Rajput (PW-4) bring home this fact beyond any doubts, corroborating the deposition of PW-1. All the said witnesses also proved they having engaged the deceased at one point of time or the other in job work for remuneration, the services used being that of a software programmer. The evidence of the widow also proved that the deceased was leading a life with all modern amenities including a motor car at his disposal, having arranged the education of his child in a reputed school of Ghaziabad. He was maintaining bank accounts and also using credit cards for day-to-day expenses. The details of expenditure narrated by PW-1 itself justify the view taken by the Tribunal in accepting the word of PW-1 about the income being Rs.22,000/- per month.

5. It is, however, noted that the Tribunal added the element of future prospects to the extent of 50%. This will have to be reduced marginally to the extent of 40% in view of the ruling of the Supreme Court in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors.*

6. The contention of the claimants in their appeal that deduction be made on account of personal and living expenses to the extent of 1/4th,

however, cannot be accepted. The deduction to the extent of 1/3rd made by the Tribunal is in accord with the ruling in *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121. At the same time, the income tax liability will have to be worked out and discounted from the income. Going by the annual income of Rs.(22,000/- X 12) Rs. 2,64,000/- income tax liability is taken as Rs.30,000/- approximately.

7. On the net income of Rs.(2,64,000 - 30,000) Rs.2,34,000/-, the loss of dependency is re-computed as (2,34,000/- X 140/100 X 2/3 X 16) Rs.34,94,400/- rounded off to Rs.34,95,000/-.

8. In lieu of the non-pecuniary damages awarded by the Tribunal following the dispensation in *Pranay Sethi* (supra), the amount of Rs.40,000/- towards loss of consortium and Rs.15,000/- each towards loss of estate and funeral expenses are added.

9. Thus, the total compensation comes to Rs. (34,95,000 + 40,000 + 15,000 + 15,000) Rs.35,65,000/- (Rupees Thirty Five Lakhs and Sixty Five Thousand Only). The award is modified accordingly.

10. Following the consistent view taken by this Court, the rate of interest is increased to 9% (nine per cent) 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.*].

11. By order dated 25.07.2012 (in MAC. Appeal No. 780/2012), the insurance company had been directed to deposit the entire awarded amount in terms of the impugned judgment. By orders dated 25.07.2012 and 07.09.2012, 50% of such amount was permitted to be

released to the claimants. The registry shall now calculate the balance amount payable to the claimants in terms of the modification ordered above and release the same to the claimants refunding the excess to the insurance company. If there is any deficiency in deposit, the insurance company will be liable to make it good by requisite deposit with the Tribunal within 30 days.

12. The statutory amount shall be refunded.

13. The appeals stand disposed of accordingly.

NOVEMBER 23, 2017

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R.K.GAUBA, J.