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

Decided on: 1st November, 2017

\+ MAC.APP. 354/2016

ORIENTAL INSURANCE COMPANY LTD ..... Appellant

Through: Mr. Tarkeshwar Nath, Mr. Saurabh Kr. Tuteja & Mr. Onkar Nath, Advs.

versus

SHAKUNTALA & ORS ..... Respondents

Through: Mr. Anshuman Bal, Adv. for R-1 & R-2

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

ORDER (ORAL)

1. The impugned judgment was passed by the tribunal on 22.01.2016 in accident claim case (case no. 45/2010) of the first and second respondents (collectively, the claimants) granting compensation in the total sum of Rs. 7,69,074/- on account of death of their bachelor son Rajni Kant, aged 22 years, in a motor vehicular accident that occurred on 03.11.2009 due to the negligent driving of bus bearing registration no. DL-1PB-0546 which was admittedly insured against third party risk for the period in question with the appellant (insurer). The challenge in appeal is to the inclusion of Rs. 7,09,074/- in the award on account of loss of dependency, the calculation having been made on notional assessment of the income of the deceased with the help of minimum wages (Rs. 4,377/-), he being an earning hand working as a conductor in private employment. The tribunal has added 50% of income towards future prospects. It is this factor which is questioned.

2. The learned counsel for the claimants fairly agrees that in view of the decision of a Constitutional Bench of the Supreme Court rendered on 31.10.2017 in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors*, the case of the deceased is to be treated as that of self-employed person and in this view the future prospects will have to be added to the extent of 40% only. Thus calculated, the loss of dependency in the case at hand will work out as [Rs. 4,377x140/100/2x12x18) Rs.6,61,802/-]. The award under the head of loss of dependency, is to be reduced by (7,09,074 – 6,61,802) Rs. 47,272/-.

3. The total compensation is thus, reduced to (7,09,074-47,272) Rs. 7,21,802 rounded off to Rs. 7,22,000 (Rupees Seven lacs and Twenty Two thousand only). The award is modified accordingly. It shall carry interest as levied by the tribunal.

4. By the order dated 27th April, 2016, the insurance company had been directed to pay the total awarded amount with upto date interest and, out of such deposit 40% was permitted to be released to the claimants, the balance kept in fixed deposit account. The tribunal shall calculate the amount payable to the claimants in terms of modification ordered above and release the balance to them refunding the excess in deposit to the insurance company.

5. The statutory deposit shall also be refunded.

6. The appeal is disposed of in the above terms.

R.K.GAUBA, J.

NOVEMBER 1, 2017
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