$~R-558

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

Decided on: 23rd November, 2017

\+ MAC APPEAL 800/2012 and CM 12708/2012

THE NEW INDIA ASSURANCE COMPANY LTD. ..... Appellant

Through: Mr. Shoumik Mazumdar, Advocate

versus

SANTOSH & ORS. ... Respondents

Through: None

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

JUDGMENT (ORAL)

1. While awarding compensation in the total sum of Rs.22,72,512/-, with interest at the rate of 9% p.a., in favour of the first to sixth respondents (collectively, the claimants) on their accident claim case (MACT 149/10/08), instituted on 04.04.2008, on account of death of Ram Chander, in a motor vehicular accident that occurred on 25.08.2007, due to negligent driving of a motor vehicle described as a Crane bearing registration no.HR-39A-6721, the liability was fastened on the appellant (insurer) to pay, it having concededly issued an insurance policy covering third party risk for the crane for the period in question. The said compensation includes Rs.19,42,512/- towards loss of dependency, Rs.10,000/- for funeral charges,

Rs.1,20,000/- for loss to estate, Rs.50,000/- towards loss of consortium and Rs.1,50,000/- towards loss of love & affection & company etc. The tribunal also directed the insurance company to pay Rs.70,000/- as counsel fee and Rs.5,000/- as out of pocket expenses to the counsel for the petitioner.

2. The appeal at hand is pressed only to seek modification of the award under the non-pecuniary heads of damages so as to bring it in accord with 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.* and to take exception to the inclusion of counsel fee and out of pocket expenses in the directions.

3. The appeal was admitted and put in the list of 'Regulars' by orders dated 13.07.2015. Upon it being called out, there is no appearance for the claimants. The appeal has been heard with the assistance of the learned counsel for the insurer and the record of the tribunal perused.

4. The modification based on the ruling in *Pranay Sethi* (supra) is called for. Thus, in lieu of the awards towards the non-pecuniary damages granted by the tribunal, Rs.40,000/- for loss of consortium and Rs.15,000/- each for funeral expenses and loss of estate are added. The compensation thus is to be reduced to [Rs.19,42,512/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/-], Rs.20,12,512/-, rounded off to Rs.20,13,000/- (Rupees Twenty lakh and thirteen thousand only). Needless to add, the award shall carry interest as levied by the tribunal.

5. There being no justification for such inclusion, the directions for payment of counsel's fee and out of pocket expenses are set aside.

6. By order dated 27.07.2012, the insurance company was directed to deposit the entire awarded amount with up-to-date interest excluding lawyer's fee and out of pocket expenses with UCO Bank, Delhi High Court branch and from out of such deposit, seventy five percent (75%) was permitted to be released to the claimants. The Registry shall now calculate the remainder of the amount payable to the claimants and release the same to them. Having regard to the fact that the apportionment in favour of the claimants was specified, it is directed that the amounts already received by the claimants other than first respondent Santosh (widow) shall be treated as their respective shares, the entire balance now to go to her alone. The excess in deposit with statutory deposit shall be refunded to the insurance company.

7. The appeal and the pending application are disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 23, 2017
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