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

Decided on: 23rd November, 2017

+ **MAC APPEAL 792/2012**

**THE NEW INDIA ASSURANCE COMPANY
LTD.**

..... Appellant

Through: Mr. Shoumik Mazumdar,
Advocate

versus

SUNITA & ORS.

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. In a motor vehicular accident that took place on 06.12.2008 involving negligent driving of a truck bearing registration no.UP-78-AT-3543, admittedly insured against third party risk with the appellant (insurer), Vijay Kumar died. His wife and five other members of the family dependent on him, they being first to sixth respondents in appeal (collectively, the claimants), instituted accident claim case (MACT No.202/10/10) on 28.05.2009 seeking compensation. The Motor Accident Claims Tribunal (Tribunal) awarded Rs.10,35,904/- as compensation with interest at the rate of 7.5% p.a. calculating it by including Rs.8,45,904/- towards loss of dependency, Rs.10,000/- for funeral charges, Rs.60,000/- for loss to estate, Rs.20,000/- for loss of

consortium and Rs.1,00,000/- for loss of love, affection, guidance, frustration, etc. The liability was placed at the door of the insurer to pay the above mentioned amount besides Rs.51,000/- and Rs.11,000/- respectively as counsels' fee.

2. The insurer, by the appeal at hand, submits that the loss of dependency has been wrongly calculated with the help of minimum wages (Rs.3,849) of semi skilled worker, it being unjustified. It also takes exception to the non-pecuniary damages and the addition of counsel's fee besides inclusion of future prospects of increase in income to the extent of 50%.

3. The evidence led before the tribunal shows that the deceased was engaged in his own private business of running a manufacturing unit in the name and style of Vijay Plastic. It is unfortunate that the widow and other claimants could not muster better proof of income. In these circumstances, it would be most unfair to go by the notional income based on minimum wages of an unskilled worker as is sought by the insurer. However, following 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.*, the future prospects will have to be restricted to 40%. Thus, the loss of dependency is re-computed as [Rs.3,849/- x 140/100 x $\frac{3}{4}$ x 12 x 16] Rs.7,75,958.40, rounded off to Rs.7,76,000/-.

4. The non-pecuniary damages also need to be brought in sync with dispensation in *Pranay Sethi* (supra). Thus, an amount of Rs.40,000/- towards loss of consortium and Rs.15,000/- each under the heads of loss to estate and funeral expenses are added. Thus, the

total compensation is computed as [Rs.7,76,000/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/-] Rs.8,46,000/- (Rupees Eight Lakh and forty six thousand only). The award is reduced accordingly.

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

6. There being no justification for such inclusion, directions for payment of counsels' fee are set aside.

7. By order dated 27.07.2012, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with UCO Bank, Delhi High Court Branch. By a subsequent order dated 05.11.2012, fifty percent (50%) of the awarded amount was permitted to be released to the claimants. The balance with accrued interest shall also now be released to the claimants in terms of the judgment of the tribunal, refunding the excess in deposit to the insurance company.

8. Statutory amount shall be refunded to the insurance company.

9. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 23, 2017

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