$~R-576 & 577

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 28th November, 2017

\+ **MAC. APPEAL No. 919/2012**

NATIONAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. Pankaj Seth, Advocate.

versus

ANITA PUNIA & ORS .….Respondents

Through: Mr. Navneet Goyal, Advocate for R-1 to 4.

\+ **MAC. APPEAL No. 50/2015**

ANITA PUNIA & ORS ..... Appellants

Through: Mr. Navneet Goyal, Advocate.

versus

NATIONAL INSURANCE CO. LTD. & ORS .….Respondent

Through: Mr. Pankaj Seth, Advocate.

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

JUDGMENT (ORAL)

1. Naresh Punia, then aged 33 years, then employed as Assistant Manager with Irkon International Limited, suffered injuries in a motor vehicular accident that occurred on 05.10.2006, due to negligent driving of motor vehicle described as Tata Safari bearing registration No. JK-02S-0066, which was duly insured against third party risk with National Insurance Company Limited (the insurer) for the period in

question and died in the consequence. His wife and three other members of the family dependent upon him (collectively, the claimants) instituted accident claim case (Suit No. 175/11) on 06.02.2007. The Tribunal held inquiry and, by judgment dated 21.03.2012, awarded compensation in the total sum of Rs. 34,72,736/-, this inclusive of Rs. 34,52,736/- towards loss of dependency and Rs.5000/- each under the heads of funeral expenses, loss of estate and loss of love and affection and loss of consortium. The liability to pay the compensation was fastened against the insurer with interest at the rate of 7.5% per annum having been added.

2. The insurer had pleaded breach of terms and conditions of the insurance policy on the ground that the vehicle had been insured as a private vehicle but used for hire. The plea was accepted and in the consequence, the insurer was granted recovery rights against Darshan Kumar (owner of the offending vehicle), a respondent in these appeals.

3. The insurer by its appeal (MAC. Appeal No.919/2012) has questioned the award on the ground that the inclusion of element of future prospects of increase in income to the extent of 50% was wrongly added in the calculation of loss of dependency and that instead of being asked to pay, it should have been exonerated.

4. The claimants, on the other hand, by their appeal (MAC. Appeal No.50/2015) have questioned the calculation on the ground that the Tribunal fell into error by taking Rs.71,932/- as the income tax liability, which is excessive deduction. The claimants also seek enhanced non-pecuniary damages and interest.

5. Following the ruling of a Constitution Bench of Supreme Court rendered on 31.10.2017 in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors.*, the exception taken to the element of future prospects by the insurer must be rejected.

6. There is merit in the submission of the claimants about the income tax liability. It is clear from bare perusal of the impugned judgment that the Tribunal has calculated the income tax on the basis of notional income arrived at by factoring in the element of future prospects which was inappropriate. Such liability is to be calculated on the basis of gross income of Rs.2,39,772/- per annum actually earned. The income tax liability by such calculation is to the tune of Rs.23,000/-.

7. In view of the above, the loss of dependency is re-calculated as [(2,39,772 – 23,000) X 150/100 X 3/4 X 16] Rs.39,01,896/- rounded off to Rs. 39,02,000/-. Following the dispensation in *Pranay Sethi* (supra), non-pecuniary damages are awarded in the sum of Rs.40,000/- towards loss of consortium and Rs.15,000/- each towards loss of estate and funeral expenses.

8. Thus, the total compensation comes to (39,02,000 + 40,000 + 15,000 + 15,000) Rs.39,72,000/- (Rupees Thirty Nine Lakhs and Seventy Two Thousand Only). The award is modified accordingly.

9. 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.*].

10. Since recovery rights were granted in favour of the insurer protecting its rights, the plea for total exoneration is unacceptable. The same is rejected.

11. By order dated 27.08.2012 in MAC. Appeal No.919/2012, the insurer had been directed to deposit the entire awarded amount with UCO Bank, Delhi High Court Branch and out of such deposit, 60% was permitted to be released to the claimants. The balance lying in deposit shall also now be released to the claimants in terms of the judgment of the Tribunal. Since the award has been modified and increased, the insurer shall be obliged to deposit the requisite amount with the Tribunal within 30 days making it available to be released to the claimants.

12. The statutory deposit made by the insurer shall be refunded upon proof being shown of the award having been satisfied.

13. Both the appeals stand disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 28, 2017
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