

\$~R-579-580 (*common order*)

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

***Decided on: 28<sup>th</sup> November, 2017***

+ MAC.APP. 925/2012

NATIONAL INSURANCE CO. LTD. .... Appellant  
Through: Mr. Pankaj Seth, Advocate

Versus

SUMAN SHARMA & ORS. .... Respondents  
Through: Mr. S.N. Parashar, Advocate

+ MAC.APP. 540/2013

SMT. SUMAN SHARMA & ORS. .... Appellants  
Through: Mr. S.N. Parashar, Advocate

Versus

NATIONAL INSURANCE CO. LTD. .... Respondent  
Through: Mr. Pankaj Seth, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT (ORAL)**

1. Ram Kishan Sharma, then aged 42 years, an employee of Delhi Jal Board, working as Assistant Pump Driver, suffered injuries in a motor vehicular accident that occurred on 05.10.2010 and died in the consequence. At the time of the accident, he was riding a motorcycle bearing registration No.DL-13SC-8689 (the motorcycle). His wife and five other family members dependent on him (collectively, the

claimants) instituted accident claim case (MACT No.55/2011) on 28.01.2011 seeking compensation on the averments that the accident had been caused due to negligent driving of car bearing registration No.DL-1CC-5183 (the car) by Kishan Kumar, a respondent in these appeals. The tribunal accepted the said case on the basis of evidence led before it and, by judgment dated 19.03.2012, held the said car driver responsible. Since the car is registered in the name of Mukesh Kumar, other respondent in the appeals and was admittedly insured against third party risk for the period in question with National Insurance Company Limited (the insurer), the liability to pay the compensation determined in the sum of Rs.28,01,016/- was fastened eventually on the insurer, though deduction being made to the extent of ten per cent (10%) on the ground of contributory negligence, the element of interest @ 7.5% per annum having been added.

2. The insurer by its appeal (MAC APP.925/2012) has questioned the calculation reached by the tribunal on the issue of involvement of the car on one hand and negligence on the part of its driver on the other. It also argues, in the alternative, that if the evidence led were to be accepted, the contributory negligence should have been to the extent of 50%. It further submits that the loss of dependency calculated was erroneous as no deduction on account of income tax liability was made.

3. *Per contra*, the claimants, by their appeal (MAC APP.540/2013), submit that the loss of dependency was not correctly calculated as certain allowances which were regular in nature have

been wrongly kept out. The claimants also argue that the rate of interest levied is inadequate.

4. Having heard the learned counsel on both sides and having gone through the record of inquiry before the tribunal, this court finds no substance in the argument of the insurer on the question of proof of negligence. The evidence of Dharam Vir Singh (PW-2) has virtually gone unimpeached, there being no effort made on the part of any of the contesting parties to call the driver of the car in the witness box to depose facts to the contrary. It is clear from the evidence of PW-2 that the car had overtaken the motorcycle at a high speed, this eventually resulting in the collision.

5. It appears that deceased had consumed alcohol as there was smell of alcohol from his nostrils after the accident had occurred. It is this fact which has resulted in the finding on the issue of contributory negligence. In the opinion of this court, the assessment of the tribunal was appropriate and would not call for any interference.

6. The claimants had proved that the deceased was earning Rs.18,921/- as salary from Delhi Jal Board. The tribunal has made deduction of conveyance allowance, washing allowance and transport allowance. This was not correct as such allowances were regular and would result in corresponding savings for the family. In these circumstances, the loss of dependency is recalculated as  $(18,921/- \times 130/100 \times 3/4 \times 12 \times 14)$  Rs.30,99,259.80 rounded off to Rs.31,00,000/-.

7. It is noted that non pecuniary damages need to be modified so as to bring them in accord with the dispensation of the 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.* Hence, awards under the non pecuniary damages are enhanced and a sum of Rs.40,000/- towards loss of consortium and Rs.15,000/- each towards loss to estate and funeral expenses are added. Thus, the total compensation comes to (31,00,000/- + 40,000/- + 15,000/- + 15,000/-) Rs.31,70,000/-.

8. Making a deduction of ten per cent (10%) on account of contributory negligence, it is directed that the claimants will be entitled to receive in total (31,70,000/- x 90/100) Rs.28,53,000/- (Rupees Twenty Eight Lacs and Fifty Three Thousand Only).

9. Following the consistent view taken by this Court, the rate of interest is increased to 9% 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. By order dated 31.08.2016 passed in MAC APP.925/2012, the insurance company had been directed to deposit the entire awarded amount. The registry shall now calculate the amount payable to the claimants. Since the award has been enhanced, the entire deposit made with accrued interest shall be released to the claimants in terms of the judgment of the tribunal. For the balance, the insurance company is directed to deposit the same with the tribunal within thirty days.

11. The statutory deposit shall be refunded to the insurer after proof is shown of compliance.
12. Both the appeals stand disposed of in above terms.
13. Pending applications also stand disposed of.

**NOVEMBER 28, 2017**  
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**R.K.GAUBA, J.**