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

Decided on: 2nd November, 2017

\+ MAC APPEAL No. 841/2011

THE NEW INDIA ASSURANCE COMPANY LTD. ..... Appellant
Through: Mr. Pankaj Seth, Adv.

versus

BHAWNA DEVI & ORS. .... Respondents
Through: None.

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

<u>JUDGMENT (ORAL)</u>

1. On 27.06.2010, a motor vehicular accident took place involving truck bearing registration no. DL 1LG 3025 (the truck), it being driven in a rash manner by the seventh respondent resulting in death of Sanjay Kumar, giving rise to cause of action in favour of first to sixth respondents (collectively, the claimants) to institute accident claim case (suit no. 405/2010) on 27.08.2010. The appellant insurance company (insurer) was added to the fray, it concededly having issued an insurance policy against third party risk in respect of the offending vehicle. The tribunal after inquiry, by judgment dated 23.07.2011, held that the accident and death had occurred due to the negligent driving of the truck. It awarded compensation in the total sum of Rs.

13,18,000/- in favour of the claimants, the said amount inclusive of Rs. 12,11,760/- towards loss of financial dependency. The liability to pay with interest was fastened on the appellant (insurer).

2. The insurer, by the appeal at hand, questions the computation of loss of financial dependency on the ground that it was based on adding the element of future prospects of increase in income even though the income had been assumed on the basis of minimum wages (Rs. 5280), the deceased admittedly being an unskilled labourer. Reference is made to the decision 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.* to argue that such element could not have been added in the case of a manual labourer whose income was being computed with the help of minimum wages. The argument, in the alternative, is that if such element were to be added, it should have been restricted to the extent of 40% as is the dispensation in *Pranay Sethi* (supra).

3. The first limb of above argument has already been considered and rejected by this Court by an earlier decision of this Court in MAC Appeal No. 798/2011 titled *Bajaj Allianz General Insurance Company Ltd. vs. Pooja & Ors.,* decided today itself.

4. The loss of dependency, thus, is to be calculated by adding the element of future prospects to the extent of 40%. Calculated accordingly, the amount is computed as (5278 x 140÷100 x 3 ÷4 x 12 x 17) Rs. 11,30,547.60/-, rounded of to Rs. 11,30,548/-. It is noted that the tribunal had awarded cumulative Rs. 35,000/- under the non-

pecuniary heads of loss of love and affection, loss of consortium, funeral expenses, loss of estate. Following the judgment of the Constitution Bench of Supreme Court in *Pranay Sethi* (supra), the compensation under the non-pecuniary heads are increased to Rs. 70,000/-, it inclusive of Rs. 15,000/- each for loss of estate and funeral expenses and Rs. 40,000/- towards loss of consortium.

5. Thus, the total compensation shall be (Rs.11,30,548/- +Rs.71,202/-+Rs.15,000/-+Rs.15,000/-+Rs.40,000/-) Rs. 12,71,750 (Twelve Lakhs Seventy One Thousand Seven Hundred Fifty Only). The award is modified accordingly.

6. The Tribunal has awarded interest @ 7.5%.

7. 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*.]

8. The insurance company would be liable to satisfy the award accordingly, as modified above, by requisite deposit with the tribunal within thirty days.

9. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 02, 2017
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