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

Decided on: 2nd November, 2017

+ **MAC APPEAL 836/2011**

YUVRAJ & ORS.

..... Appellants

Through: Mr. Navneet Goyal, Advocate

versus

RAMU VERMA @ RAHUL & ANR.

..... Respondents

Through: Mr. Priyadarsi Acharya for Mr.
Sameer Nandwani, Advocate
for R-2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Dharam Raj Pandey, then aged 56 years, a widower, died in a motor vehicular accident that occurred on 04.02.2008 due to negligent driving of a motorcycle bearing registration no.DL-4S-BK-2759 (the motor cycle) by Ramu Verma @ Rahul (first respondent), since deceased and substituted by his father. The three sons and one married daughter of Dharam Raj Pandey, they now being the appellants (collectively, the claimants), instituted accident claim case (MACT 1019/10/2008) on 27.03.2008 seeking compensation under Section 166 of the Motor Vehicles Act, 1988 impleading Bajaj Allianz General Insurance Company Ltd. (insurer) as the second respondent, it also being a respondent in the appeal.

2. By judgment dated 02.08.2011, on the basis of the evidence led, the Motor Accident Claims Tribunal (Tribunal) accepted the case for compensation holding the said motorcyclist responsible for the fatal accident. The Tribunal awarded compensation in the total sum of Rs.2,38,382/- burdening the first respondent with the liability to pay with interest, the said amount inclusive of Rs.2,200/- towards medical expenses, Rs.1,96,182/- towards loss of dependency, Rs.10,000/- each towards funeral charges and loss to estate and Rs.20,000/- on account of loss of love and affection.

3. The insurer (second respondent) has raised the defence that the driver of the motor cycle was not holding a valid or effective driving licence. Evidence to this effect was adduced with virtually no contest from the motorcyclist (first respondent). The tribunal accepted that even if the copy of the driving licence which had been submitted was presumed to be genuine, it would not be a licence authorizing the first respondent to drive the motorcycle, a vehicle which falls in the category distinct from one of light motor vehicle under the law and rules. On this ground, the insurance company was exonerated.

4. By the appeal at hand, the claimants seek enhancement on the ground that the awards under the pecuniary and non-pecuniary heads of damages granted by the tribunal are deficient. It has been submitted that while three of the children were found to be major and settled, thus not dependent, one of the son was held to be a minor and, therefore, deduction on account of personal and living expenses should have been made to the extent of one-third rather than one-half. This plea cannot be accepted since as per the ruling in *Sarla Verma &*

Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121, deduction of one-third is made on this account in cases where the claimants are two or three in number.

5. The claimants, however, also rely on the judgment dated 31.10.2017 of the Constitution Bench of the Supreme Court rendered in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors.* to plead that the element of future prospects of increase in income should have been added. It is noted that the tribunal had taken the income of the deceased as Rs.3,633/- on the basis of minimum wages. Since the deceased was a self-employed person, having regard to his age (56 years), the element of future prospects to the extent of 10% has to be added.

6. Thus, the loss of dependency is re-computed as $[Rs.3,633/- \times 110/100 / 2 \times 12 \times 9]$ Rs.2,15,800/- (Rupees Two Lakh, Fifteen thousand and eight hundred only).

7. Following the view taken in *MACA 798/2011, Bajaj Allianz General Insurance Company Ltd. Vs. Pooja and Ors.*, decided earlier today, the loss of estate and funeral charges are awarded in the sums of Rs.15,000/- each. The total compensation thus is re-computed as $[Rs.2200/- + Rs.2,15,800/- + Rs.15,000/- + Rs.15,000/-]$ Rs.2,48,000/- (Rupees Two lakh and forty eight thousand only). The award is modified accordingly. It shall carry interest as levied by the tribunal.

8. It is noted that the tribunal did not make any apportionment of the award. It is directed that the amount shall be paid in equal proportion to all the four claimants.

9. The submission of the claimants in appeal against exoneration of the insurance company is also found to be correct. Even if there was a breach of the terms and conditions of the insurance policy, there is no reason why the insurer must not discharge its statutory responsibility towards the third parties whose interest it had undertaken to care for. In this view, it is directed that the insurance company shall pay the award as modified above by requisite deposit with the tribunal within 30 days, where-after it shall have the liberty to recover the said amount from the first respondent or his estate.

10. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 02, 2017

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