$~R-575 & 602

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

Decided on: 27th November, 2017

\+ MAC APPEAL 918/2012 and CM 14585/2012 and 3551/2014

THE NEW INDIA ASSURANCE COMPANY LTD. . ..Appellant

Through: Mr. Pankaj Seth, Advocate

versus

SUMAN LATA & ORS. ..... Respondents

Through: None

\+ MAC APPEAL 1001/2012

SUMAN LATA & ORS. ..... Appellants

Through: None

versus

THE NEW INDIA ASSURANCE COMPANY LTD. & ORS. ..... Respondents

Through: Mr. Pankaj Seth, Advocate for R-1

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

JUDGMENT (ORAL)

1. Vinod Kumar, then aged 49 years, employed in a private service, suffered injuries in a motor vehicular accident that had occurred on 16.09.2011, due to negligent driving of truck bearing registration no.HR-74-7756 admittedly insured against third party risk

with New India Assurance Company Ltd. (insurer) for the period in question and died in the consequence. His wife and three other members of the family dependent on him (collectively, the claimants) instituted accident claim case (suit no.03/12), seeking compensation, on 19.01.2012.

2. The Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 06.06.2012, accepted the case that death had occurred due to negligent driving of the truck by Ayub Khan, a respondent in these appeals. The truck was registered in the name of Jakir, another respondent in these appeals, at whose instance, the insurer had issued the third party risk insurance cover. The tribunal awarded compensation in the total sum of Rs.15,17,500/- and directed the insurer to pay with interest at the rate of 7.5% p.a.

3. The insurer by its appeal (MACA 918/2012) has questioned the impugned judgment on the ground that negligence on the part of the truck driver was not strictly proved.

4. The claimants, on the other hand, by their appeal (MACA 1001/2012) expressed the grievance about the inadequacy of the award primarily referring to the non-inclusion of future prospects and the rate of interest being low.

5. Both appeals were admitted and directed to be put up in the list of 'Regulars', to come up on their own turn by orders dated 14.01.2016. When they are called out for hearing, there is no appearance for the claimants. The learned counsel for the insurer has been heard and with his assistance record perused.

6. The tribunal has gone by the principle of *res ipsa loquitur* in reaching the conclusion about the negligence on the part of the truck driver. Noticeably, the contesting parties including the insurer did not call upon the driver of the truck to depose and explain the sequence of events leading to the collision. In these circumstances, the finding returned by the tribunal does not call for interference.

7. 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.*, future prospects to the extent of 30% deserve to be added. Thus, the loss of dependency is re-computed as [Rs.12,500/- x 130/100 x 3/4 x 12 x 13] Rs.19,01,250/-, rounded off to Rs.19,02,000/-.

8. It is noted that the non-pecuniary heads of damages are not in accord with the dispensation in *Pranay Sethi* (supra). Thus, in their lieu, Rs.40,000/- is added towards loss of consortium, Rs.15,000/- each is added towards loss to estate and funeral expenses. The total compensation in the case thus is worked out at [Rs.19,02,000/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/-] Rs.19,72,000/- (Rupees Nineteen Lakh and seventy two thousand only).

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. By order dated 27.08.2012 on MACA 918/2012, the insurance company had been directed to deposit the entire awarded amount with

up-to-date interest with the UCO Bank, Delhi High Court branch and by subsequent order dated 02.04.2014, sixty percent (60%) was permitted to be released to the claimants. Since the award has been increased, the entire balance lying in deposit shall be released to the claimants in terms of the impugned judgment. It is directed that the entire enhanced portion of the award including on account of increase in the rate of interest shall fall to the share of the first claimant / Suman Lata (widow) only, it to be released to her in the form of a fixed deposit receipt taken out from a nationalized bank for a period of seven years with right to draw periodic interest. The insurer is directed to satisfy the enhanced award with upto date interest with requisite deposit with the tribunal within 30 days.

11. The statutory amount shall be refunded to the insurer after proof is shown of the award having been satisfied.

12. Both the appeals and the pending applications are disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 27, 2017
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