$~R-588

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 29th November, 2017

\+ MAC. APPEAL 957/2012

NEW INDIA ASSURANCE CO LTD. ..... Appellant

Through: Mr. Salil Paul, Advocate.

versus

NISHA YADAV & ORS .....Respondents

Through: Mr. Nitinjya Chaudhry with Mr. Rajiv Trivedi, Advocates for R1 to 5.

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

JUDGMENT (ORAL)

1. Rajendra Prasad Yadav, then aged 46 years, a hawker by profession, suffered fatal injuries due to motor vehicular accident that occurred on 10.10.2011, due to negligent driving of bus bearing registration No. DL-1PC-0999, which was concededly insured against third party risk with the appellant (insurer) for the period in question. On the accident claim case (Suit No. 535/11), instituted on 09.11.2011, by the first to fifth respondents (collectively, the claimants), the Tribunal awarded compensation in the total sum of Rs.16,88,000/-, which included Rs.16,38,000/- towards loss of dependency, Rs.25,000/- for loss of love and affection, Rs.10,000/- each for loss of consortium and loss of estate and Rs.5,000/- for

funeral expenses, the liability having been fastened on the insurer to pay the said amount with interest at the rate of 9% per annum with further direction that in case of default in payment within 30 days, rate of interest would increase to 12% per annum.

2. The insurer presses the appeal at hand to question the calculation of loss of dependency on three counts, namely, the income of Rs.10,000/- per month, the addition of future prospects the extent of 30% and the invocation of multiplier of 14.

3. *Per contra*, the counsel for the claimant submitted that the non-pecuniary damages be brought in accord with 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.*, which is also referred to by the insurer to press home the earlier mentioned submissions.

4. Indeed, there was no formal proof of income of the deceased from his business which had no fixed place. In these circumstances, the assumption of Rs.10,000/- per month as income is unfounded. The Tribunals and Courts have consistently fallen back on minimum wages in such fact situations. In the present case, the minimum wages of matriculate of Rs.8,112/- per month should have been invoked as the deceased had studied upto 10th standard. Keeping in view the age of the deceased, in view of the ruling in *Pranay Sethi* (supra), the future prospects of increase in income will have to be restricted to 25% and the multiplier of 13 adopted.

5. Thus, the loss of dependency is re-computed as (8112 X 125/100 X 3/4 X 12 X 13) Rs.11,86,380/- rounded off to Rs.11,87,000/-.

6. Following the dispensation in *Pranay Sethi* (supra), in lieu of the non-pecuniary damages awarded by the Tribunal, Rs.40,000/- towards loss of consortium and Rs.15,000/- each for loss of estate and funeral expenses are added.

7. Therefore, the total compensation payable in the case is calculated as (11,87,000 + 40,000 + 15,000 + 15,000) Rs. 12,57,000/- (Rupees Twelve Lakhs and Fifty Seven Thousand Only). The award is modified accordingly. It shall carry interest at 9% (nine per cent) from the date of filing of the petition till its realization.

8. There being no justification for such direction, the direction about rate of interest in case of default @ 12% is set aside.

9. By order dated 31.08.2012, the insurer had been directed to deposit the entire awarded amount with UCO Bank, Delhi High Court Branch. By order dated 04.12.2012, 80% of said amount was permitted to be released to the claimants. The registry shall calculate the amount payable to the claimants in terms of the modified award and in case there is any deficiency, release the same from the balance. Conversely, if excess has been paid, the claimants will be obliged to refund the same to the insurance company. In case of default on either side, the parties are left to take out proceedings for recovery before the Tribunal.

10. The statutory amount shall be refunded to the appellant.

11. The appeal stands disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 29, 2017
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