$~R-528 & 529

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

Decided on: 21st November, 2017

\+ MAC APPEAL 710/2012

HDFC ERGO GENERAL INSURANCE COMPANY LTD. ..... Appellant

Through: Ms. Neerja Sachdeva, Advocate

versus

BIJORA DEVI & ORS. ..... Respondents

Through: Mr. D.S.Bora and Mr. R.S. Rawat, Advocates for the respondents / claimants

\+ MAC APPEAL 844/2013 and CM 18346/2013 & 19796/2015

BIJORA DEVI & ORS. ..... Appellants

Through: Mr. D.S.Bora and Mr. R.S. Rawat, Advocates

Versus

HDFC ERGO GENERAL INSURANCE COMPANY LTD. & ORS. ..... Respondents

Through: Ms. Neerja Sachdeva, Advocate for R-1

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

<u>JUDGMENT (ORAL)</u>

1. Dinesh Singh, then aged 38 years, earning his livelihood as a driver, died due to the injuries suffered in a motor vehicular accident

that occurred on 16.02.2011 due to the negligent driving of a motor vehicle described as one bearing registration no.HR-29-V-8707 admittedly insured against third party risk with HDFC Ergo General Insurance Company Ltd. (insurer) for the period in question. On accident claim case (suit no.12/2011) instituted on 11.05.2011 by his wife and three other members of the family dependent on him (collectively, the claimants), the Motor Accident Claims Tribunal (Tribunal), by judgment dated 25.01.2012, awarded compensation in the total sum of Rs.15,12,000/- and fastened the liability against the insurer to pay. The amount of compensation thus awarded includes Rs.14,22,000/- towards loss of dependency, Rs.20,000/- towards funeral charges, Rs.50,000/- towards loss of love and affection and Rs.10,000/- each for loss of consortium and loss to estate.

2. The insurer has come up in appeal (MACA 710/2012) questioning the award under the head of loss of dependency on the ground that the element of future prospects of increase was wrongly added to the extent of 50%. On the other hand, the claimants also have come up in appeal (MACA 844/2013) seeking enhancement of the compensation stating that the income was wrongly taken as Rs.7,000/- p.m.

3. During the pendency of these appeals, claimants were given opportunity to lead additional evidence. They examined Manish Kumar Sharma (AW-1) in MACA 844/2013. The evidence of AW-1 has proved that the deceased was engaged as a driver with M/s. Formula Manpower Solutions Pvt. Ltd., his salary slips for the months of October 2010 to December 2010 having been proved (Ex. AW1/1

to 3). It is noted that the income of the deceased would vary from month to month mostly on account of over time allowance. He was otherwise a regular employee who was receiving basic pay plus allowances in the nature of house rent allowance, food allowance and washing allowance. In these circumstances, as submitted by the claimants, the average income of the deceased can be taken as [Rs.13,090.50 + Rs.14,014/- + Rs.11,842.22 / 3] Rs.12,982.24, rounded off to Rs.12,990/-. The loss of dependency is calculated accordingly. Given the fact that the deceased was in regular employment having regard to his age, the element of future prospects of increase to the extent of 50% deserves to be added.

4. There is no room for any additions on account of employee's contribution to Employees Provident Fund or Employees State Insurance Scheme or for that matter towards bonus in the present case.

5. Thus, the loss of dependency is re-calculated as [Rs.12,990 x 150/100 x 3 / 4 x 12 x 15] Rs.26,30,475/-, rounded off to Rs.26,31,000/-.

6. The non-pecuniary heads of damages also have to be brought in *sync* with the dispensation in the ruling 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.* Thus, the amount of Rs.40,000/- towards loss of consortium and Rs.15,000/- each on account of loss to estate and funeral expenses are added. The total compensation is re-computed as [Rs.26,31,000/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/-] Rs.27,01,000/- (Rupees Twenty seven lakh and one thousand only).

7. The award is modified accordingly.

8. By order dated 11.07.2012, 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 from out of such deposit, sixty percent (60%) was permitted to be released to the claimants. Since the amount of compensation has been increased, the entire balance shall be released to the claimants in terms of the modification ordered above. The insurance company is directed to satisfy the balance of its liability under the modified award by requisite deposit with the tribunal within 30 days.

9. The statutory deposit made by the insurance company shall be refunded after proof is furnished of the award having been satisfied.

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

R.K.GAUBA, J.

NOVEMBER 21, 2017
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