$~R-593

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

Decided on: 29th November, 2017

\+ MAC APPEAL 977/2012

ICICI LOMBARD GENERAL INSURANCE COMPANY LTD. ..... Appellant

Through: Ms. Suman Bagga, Advocate

versus

KIRAN & ORS. .... Respondents

Through: Mr. S.N.Parashar, Advocate

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

JUDGMENT (ORAL)

1. Surender Kumar Sharma @ Bunty, then aged over 22 years, suffered fatal injuries in a motor vehicular accident that took place on 10.10.2007, due to the negligent driving of a motor vehicle bearing registration no.HR-47A-4393, admittedly insured against third party risk with the appellant (insurer) for the period in question. On accident claim case (MACT suit no.141/2010), instituted on 25.01.2008, by the first to fifth respondents (collectively, the claimants), the Motor Claims Accident Tribunal (Tribunal) awarded compensation in the total sum of Rs.36,70,000/-, directing the insurer to pay with interest at the rate of 7.5% calculating it thus :-

Compensation on account of loss of dependency	Rs.36,45,000/-
Funeral expenses	Rs.5,000/-
On account of loss of love and affection	Rs.10,000/-
On account of contribution towards loss to estate	Rs.10,000/-
Total	Rs.36,70,000/-

2. The insurer is in appeal to question the calculation of loss of dependency, assailing the assessment of the income at Rs.15,000/- p.m. and taking exception to the addition of future prospects of increase in income to the extent of 50%.

3. Having heard the learned counsel on both sides and having gone through the tribunal's record, this court is of the opinion that the first contention noted above must be rejected while the future prospects of increase in income must be reduced to the extent of 40% in view of 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.*

4. The evidence led before the tribunal included the deposition of the widow Kiran (PW-1) and testimony of Prakash Mohan Sharma (PW-3), an official of Bank of Baroda, where the deceased was operating the bank account. The evidence has proved that the deceased was owner of the Canter / truck bearing registration no.UP-17A-7001 which he would ply on hire to earn income. The regular income earned is duly corroborated by the statement of bank account produced by PW-3. In these circumstances, the finding of the tribunal on the issue of income does not call for any interference.

5. However, in view of the requirement of correction due to future prospects of increase in income, the loss of dependency is re-calculated as [Rs.15,000/- x 140/100 x 3/4 x 12 x 18] Rs.34,02,000/-.

6. As pointed out by the counsel for the claimants, non-pecuniary heads of damages granted by the tribunal are inadequate. To bring them in accord with the dispensation in *Pranay Sethi* (supra), in their lieu, Rs.40,000/- is added towards loss of consortium and Rs.15,000/- each is added for loss to estate and funeral expenses.

7. Thus, the total compensation in the case comes to [Rs.34,02,000/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/-] Rs.34,72,000/- (Rupees Thirty four lakh and seventy two thousand only). The award is modified accordingly.

8. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum (nine percent) 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*.]

9. By order dated 04.09.2012, the insurance company had been directed to deposit 60% of the awarded amount with proportionate interest with UCO Bank, Delhi High Court branch and by the very same order dated i.e. 04.09.2012 followed by another order dated 25.10.2013, some amount was allowed to be released to the claimants. The Registry shall calculate the balance with accrued interest payable to the claimants and release the same. The insurer is directed to satisfy the modified award by requisite deposit of the balance with the

tribunal within 30 days making it available to be released to the claimants.

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

11. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 29, 2017
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