$~R-607

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 30th November, 2017

\+ MAC. APPEAL No.1042/2012 and CM No.16346/2012 (stay)

THE NEW INDIA ASSURANCE COMPANY LTD.
..... Appellant

Through: Mr. Pankaj Seth, Advocate

versus

ASHRAFI DEVI & ORS. .....Respondents
Through: Nemo.

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

JUDGMENT (ORAL)

1. Soran Singh, aged 42 years, earning his livelihood from the transport business, suffered injuries and died in the consequence, as a result of motor vehicular accident that had occurred on 08.04.2008, due to negligent driving of motor vehicle, described as truck bearing registration No.UP-85E-9217, which was admittedly insured against third party risk for the period in question with the appellant insurance company (insurer). On the accident claim case (Petition No.400/2008) instituted by his widow and six other members of the family dependent on him, they being first to seventh respondents (collectively, the claimants), the tribunal held inquiry, and by judgment dated 05.07.2012, awarded compensation in the total sum

of Rs.26,75,800/-, fastening the liability on the insurer to pay the same with interest @ 7.5% per annum, which have been calculated thus:-

Sl.No.	**Heads**	**Amount (in Rs.)**
1.	Loss of dependency	26,20,800/-
2.	Loss of consortium	10,000/-
3.	Loss of love and affection to all the petitioners	25,000/-
4.	Loss of estate	10,000/-
5.	Funeral expenses	10,000/-
	Total	26,75,800/-

2. The insurer questions the award on the ground that the loss of dependency was wrongly calculated on the income of Rs.15,000/- with the element of future prospects of increase in income to the extent of thirty per cent (30%).

3. Having heard the counsel for the insurer and having gone through the record, this court finds no substance in the questions raised on the finding of income of the deceased. The deceased, it was proved, was owner of a truck and earning his livelihood from transport business. The evidence clearly shows that he was paying equated monthly installments to repay the loan taken for purchase of the said vehicle. In these circumstances, the finding on the issue of income is not disturbed.

4. However, 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.*, the element of future prospects has to be restricted to 25%. Thus, the loss of dependency is re-computed as (15,000/- x 125/100 x 4/5 x 12 x 14) Rs.25,20,000/-.

5. It is noted that the non-pecuniary heads of damages are required to be readjusted as per dispensation in *Pranay Sethi* (supra). Thus, in lieu of awards made by the tribunal, Rs.40,000/- towards loss of consortium and Rs.15,000/- each on account of loss to estate and funeral expenses are added.

6. The total compensation, thus, comes to (25,20,000/- + 40,000/- + 15,000/- + 15,000/-) Rs.25,90,000/- (Rupees Twenty Five Lacs Ninety Thousand Only). The award is modified accordingly.

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

8. By order dated 17.09.2012, the insurance company had been directed to deposit the entire awarded amount with upto date interest with the tribunal and by subsequent order dated 16.11.2012, seventy per cent (70%) of the deposited amount was released to the claimants.

9. Since the interest has been revised, the tribunal is directed to re-calculate amount payable under the modified award as above and release the balance to the claimants, and refund the excess, if any, to

the insurer. Conversely, if there is any deficiency in the amount, the insurer is directed to deposit the same with the tribunal within thirty days.

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

11. The appeal along with pending application stand disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 30, 2017
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