$~R-606

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 30th November, 2017

\+ MAC. APPEAL No.1014/2012

NATIONAL INSURANCE COMPANY LTD. ..... Appellant
Through: Ms. Rakhi Dubey, Advocate

versus

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

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

JUDGMENT (ORAL)

1. Rajender @ Raju, aged 33 years, died as a result of the injuries suffered in a motor vehicular accident that had occurred on 23.12.2009, due to negligent driving of motor vehicle, described as bus bearing registration No.UP-14R-7430, which was admittedly insured against third party risk for the period in question with the appellant insurance company (insurer). On the accident claim case (MACT No.684/2010) instituted by the members of his family, they being first to seventh respondents (collectively, the claimants), instituted on 12.01.2010, the tribunal held inquiry, and by judgment dated 05.07.2012, awarded compensation in the total sum of Rs.18,20,600/-, calculating it thus:-

Sl.No.	Heads	Amount (in Rs.)
1.	Funeral charges	15,000/-
2.	Loss of consortium	50,000/-
3.	Loss of dependency	13,05,600/-
4.	Loss of love and affection etc.	1,75,000/-
5.	Loss of parental care and attention `	1,00,000/-
6.	Loss of estate	1,75,000/-
	Total	18,20,600/-

2. The liability to pay aforesaid amount with interest @ 12% per annum along with direction for default interest @ 15%, was placed at the door of the insurer, it also having been directed to pay Rs.70,000/- as counsel fee along with Rs.10,000/- out of pocket expenses.

3. The insurer by the appeal at hand questions the award submitting that it is excessive. It is pointed out that the tribunal has taken notional income of the claimant at Rs.8500/- as minimum wages. The minimum wages of an unskilled worker during the relevant period were Rs.3953/- only. The notional income assessed by the tribunal is, thus, unfounded.

4. Having regard to the age of the deceased, he being self employed person, the element of future prospects of increase in income to the extent of forty per cent (40%), however, will have to be added.

5. Thus, the total compensation towards loss of dependency is re-worked as (3953/- x 140/100 x 4/5 x 12 x 16) Rs.8,50,053.12 rounded off to Rs.8,51,000/-.

6. Following the dispensation in a decision 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 non-pecuniary heads of damages are required to be readjusted. The damages awarded by the tribunal under the heads of funeral expenses, loss of consortium, loss of love and affection, loss of parental care and attention, loss of estate are set aside and, in lieu thereof, an 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. Thus, the total compensation, comes to (8,51,000/- + 40,000/- + 15,000/- + 15,000/-) Rs.9,21,000/- (Rupees Nine Lacs Twenty One Thousand Only).

7. There is no sound reason set out in the impugned judgment for imposition of the enhanced rate of interest at 12% p.a. Following the consistent view taken by this Court, the rate of interest is reduced 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. There being no justification for such inclusion, the directions in the impugned judgment for payment of counsel fee and out of pocket expenses are also set aside.

9. The award is modified accordingly.

10. By order dated 12.09.2012, the insurance company had been directed to deposit 75% of the awarded amount, excluding counsel fee and out of pocket expenses. By order dated 16.01.2013, the disbursal of monthly interest accrued on the said amount held in deposit was directed in favour of second respondent Kamlesh (widow). The amount received by her will be adjusted in the calculation to be made by the registry regarding the amount payable to the claimants in terms of the modified award.

11. The registry shall now calculate the balance amount payable to the claimants in terms of the modification ordered above, releasing the same to the claimants and refunding the excess to the insurance company along with statutory deposit.

12. The appeal along with pending application stands disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 30, 2017
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