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

Decided on: 06th November, 2017

\+ MAC APPEAL 930/2011 and CM 19410/2011

ORIENTAL INSURANCE COMPANY LTD. ..... Appellant
Through: Ms. Neerja Sachdeva, Advocate

versus

MAMAN SINGH & ORS. ..... Respondents
Through: Mr. Amit Kumar Pandey, Advocate

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

<u>JUDGMENT (ORAL)</u>

1. Devender Kumar, aged 22 years, a bachelor, while riding on the motorcycle at about 3.00 p.m. on 02.03.2001 suffered injuries on being involved in a motor vehicular accident due to the negligent driving of a bus bearing registration no.DL-1P-8133 which was insured against third party risk with the appellant (insurer) for the period in question and died in the consequence. His father instituted accident claim case (MACT 772/2008) on 18.11.2008.

2. The Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 12.08.2011, granted compensation in the total sum of Rs.4,62,960/- directing the appellant / insurer to pay the same with interest at the rate of 7.5% p.a. under Section 163A of the Motor Vehicles Act, 1988. The amount of compensation thus awarded

included Rs.4,17,960/- towards loss of dependency, besides Rs.25,000/- for loss of love and affection and Rs.10,000/- each towards funeral expenses and loss to estate.

3. The insurer, by the appeal at hand, questions the said calculation contending that the tribunal fell into error by adding the element of future prospects of increase which was uncalled for in a case under Section 163 A of the Motor Vehicles Act, 1988. It is also submitted that the tribunal has failed to make any deduction on account of personal and living expenses.

4. During the course of hearing, the learned counsel for the insurer was asked by the court to reconsider her position and the arguments in view of the judgment 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.*, She, however, insisted that the appeal may be considered and decided on merits of the contentions which have been urged by her.

5. The claimants had not been able to prove the regular income of the deceased and, therefore, the tribunal was constrained to go by the minimum wages (Rs.2579 p.m.). The decision in *Pranay Sethi* (supra) makes no distinction between a claim under Section 166 or one under Section 163-A of Motor Vehicles Act for assessing the income. Since the element of future prospects of increase would deserve to be added to the extent of 40% in view of the ruling in *Pranay Sethi* (supra), and suitable corrections also needs to be made on the issue of multiplier, per the ruling in *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121* and the dispensation in second schedule

appended to the Motor Vehicles Act, 1988, the multiplier (17) requiring to be chosen according to the age of the deceased, the loss of dependency has to be recomputed. In terms of the second schedule to the Motor Vehicles Act, 1988, the deduction of one-third is to be made on account of the personal and living expenses. Therefore, the loss of dependency is recomputed as [Rs.2,579/- x 140/100 x 2/3 x 12 x 17] Rs.4,91,041.60, rounded off to Rs.4,91,042/- (Rupees Four Lakh ninety one thousand and forty two only). Following the dispensation in *Pranay Sethi* (supra), the awards under the non-pecuniary heads of funeral expenses and loss to estate at Rs.15,000/- are added.

6. Thus, the total compensation in the case is computed as [Rs.4,91,042/- + Rs.15,000/- + Rs.15,000/-] Rs.5,21,042/-, rounded off to Rs.5,22,000/- (Rupees Five Lakh and twenty two thousand only). The award is modified accordingly.

7. 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*.]

8. It is directed that the enhanced portion of the award with corresponding interest shall be released to the claimant in the form of a fixed deposit receipt taken out from a nationalized bank for a period of five years with right to draw periodic interest.

9. By order dated 31.10.2011, the insurance company had been directed to deposit 75% of the awarded amount as a pre-condition to the stay against execution. By order dated 03.02.2016, while releasing

the said amount deposited, the insurance company was directed to deposit the balance amount also, it to be kept in fixed deposit interest bearing account with the Tribunal. The tribunal shall now release the balance lying in deposit to the claimant. The insurance company is directed to pay the remainder of its liability under the modification ordered above by requisite deposit with the tribunal within 30 days.

10. The statutory amount is forfeited as costs and made over to Delhi High Court Legal Services Committee.

11. The appeal and the pending application are disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 06, 2017
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