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

Decided on: 19th July, 2017

\+ MAC APPEAL 434/2016 & CM NO. 19736/2016

CHOLAMANDALAM MS. GENERAL INS. CO. LTD. ... Appellant

Through: Mr. Pankaj Gupta, Adv. for Ms. Suman Bagga, Adv.

versus

RAKESH & ORS. ..... Respondents

Through: Mr. Navneet Goyal, Adv. for R-1 to 4.

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

JUDGMENT (ORAL)

1. Pinky, a house wife, then aged 36 years, died as a result of injuries suffered in motor vehicular accident that occurred on 02.07.2015, involving rash driving of vehicle bearing registration no. DL 1M 5890 which was admittedly insured against third party risk with the appellant insurance company. Her husband and other members of family dependent on her, they being first to fourth respondents (collectively, the claimants) instituted accident claim case (suit no. 244/2015) on 03.08.2015. The tribunal accepting the case of cause of action arising on the principle of fault liability, by judgment dated 25.02.2016, awarded compensation in the total sum of Rs.

24,77,200/- in favour of the claimants. It includes loss of dependency calculated as Rs. 22,52,200/- on the notional income of Rs. 12,512/-, it being the minimum wages for non-matriculates with the factor of future prospects to the extent of 25% added in terms of decision of this Court in *Royal Sundaram Alliance Insurance Co. Ltd. v. Manmeet Singh* 2012 ACJ 721.

2. The insurance company which has been called upon to satisfy the award is in appeal submitting that the deduction on account of personal & living expenses to the extent of $1/4^{th}$ should have been made in terms of decision of Supreme Court in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.,* (2009) 6 SCC 121.

3. *Per contra,* the counsel for the claimants, submitted that no such deduction has been indicated in the case of *Royal Sundaram Alliance Insurance Co. Ltd. v. Manmeet Singh* (supra). He also pointed out that the non-pecuniary damages in the sum of Rs. 1 lakh each on account of loss of love & affection and loss of consortium and Rs. 25,000/- are inadequate.

4. The issue on deduction on account of personal & living expenses was settled by this court by a decision in *Reliance General Insurance Co Ltd vs. Murgan & Ors*. in MAC Appeal No. 1177/2014 decided on 25.02.2016. Upon deduction to the extent of $1/4^{th}$ towards personal and living expenses being made (the number of dependents being four), the loss of dependency is re-computed as (12512 x 3÷ 4 x 12 x 15) Rs. 16,89,120/- rounded off to Rs. 16,90,000/-.

5. Indeed, the non-pecuniary damages awarded by the tribunal are on the lower side. Having regard to the date of accident and following

the decision in MAC.APP.No.160/2015 *Shriram General Insurance Co Ltd v. Usha* decided by this court on 05.05.2016, non-pecuniary damages in the sum of Rs.1,50,000/- each towards loss of love & affection and towards loss of consortium and Rs.50,000/- towards funeral expense are added. Hence, the total compensation payable in the case comes to (16,90,000 + 1,50,000 + 1,50,000 + 50,000) Rs. 20,40,000/-. The award is modified accordingly. It shall carry interest as levied by the tribunal.

6. By order dated 24.05.2016, the insurance company had been directed to deposit the entire awarded amount with the tribunal and out of such deposit, 50% was allowed to be released to the claimants, the balance kept in interest bearing fixed deposit account. The tribunal shall now release the balance in terms of the modified award refunding the excess to the insurance company.

7. Statutory amount shall be refunded.

R.K.GAUBA, J.

JULY 19, 2017
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