

\$~R-418

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 6th November, 2017

+ MAC.APP. 1035/2011

NIDHI ARORA & ORS

..... Appellants

Through: None.

versus

RELIANCE GENERAL INSURANCE CO. LTD.

..... Respondents

Through: Mr. Pankaj Seth, Adv.
insurance company.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Ashwani Arora, aged 38 years, engaged in a private business, suffered injuries in a motor vehicular accident that occurred on 10.03.2011 due to negligent driving of Truck bearing registration no. HR 38 H 6915 and died in the consequence, the said vehicle being driven by the third respondent (driver), it concededly being registered in the name of second respondent (registered owner) and insured against third party risk with the first respondent (insurer). Accident claim case (suit no. 171/11) was filed on 27.04.2011 by the wife, two children and parents of the deceased, first three now being the appellants and the parents being the fourth and fifth respondents in appeal (collectively, the claimants). The tribunal held inquiry and, by judgment dated 12.09.2011, held that the accident had occurred due to

negligent driving of the truck. It awarded compensation in the total sum of Rs. 21,42,400/-, directing the insurer to pay the said amount, it inclusive of Rs. 20,63,497.50 towards loss of dependency besides Rs. 10,000/- each on account of loss of consortium and loss to estate, Rs.5,000/- as funeral expenses and Rs. 53,900/- towards medical expenses.

2. The claimants felt aggrieved with the amount of compensation granted and came up with the present appeal seeking enhancement. The appeal was admitted and directed to be put in the category of 'regulars' to come up in due course as per order dated 17.03.2015. When it is taken up for hearing there is no appearance on behalf of the claimants/appellants. The matter has been considered with the assistance of the learned counsel for the insurer.

3. It is noted that the claimants had proved before the tribunal, by formal evidence that the deceased was a graduate in Mechanical Engineering from University of Gulbarga (Ex.PW-1/19) and was engaged in earning his livelihood by running his own business in the name and style of M/s Ashirwad Appliances, at least two trademarks being registered in his name. His income was proved as Rs. 1,86,600/- per annum on the basis of income-tax return (ITR) for the year 2010-11 which had been submitted before the Income-Tax Department prior to the death. The tribunal noted the income-tax liability of Rs. 3,178/- and, thus, concluded the net income as Rs. 1,83,422/- per annum. It applied the multiplier of 15, made deduction

of 1/4th towards personal and living expenses and on such basis calculated the loss of dependency.

4. The prime grievances raised in the appeal are that the tribunal has failed to take into account the element of future prospects of increase and that the multiplier of 18 should have been adopted.

5. The first above-mentioned contention must be accepted in view of the ruling of the 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 present case being one that of a self-employed person, such factor is to be granted at 40%. The contention about the multiplier cannot be accepted as the same is in accord with the dispensation in *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121*, which has been affirmed in *Pranay Sethi (supra)*. The loss of dependency is thus, recalculated as $(1,83,422 \times 140 \div 100 \times 3 \div 4 \times 15)$ Rs. 28,88,896.5 rounded off to Rs. 28,88,897/-.

6. Going by the ruling in *Pranay Sethi (supra)*, the non-pecuniary damages also need to be suitably revised. Thus, an amount of Rs. 40,000/- is added towards loss of consortium and the amounts of Rs. 15,000/- each are included on account of loss of estate and funeral expenses. Putting together all heads of damages including the medical expenses of Rs. 53,900/-, the total compensation comes to $(28,88,897 + 40,000 + 15,000 + 15,000 + 53,900)$ Rs. 30,12,797/-, rounded off to Rs. 30,13,000/- (Rupees Thirty Lacs and Thirteen Thousand Only).

7. Following the consistent view taken by this Court, the rate of interest is increased to 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. Having regard to the shares apportioned by the tribunal in favour of different claimants, it is directed that the entire enhanced portion of the award along with effect of increase in interest, shall fall to the share of first claimant Nidhi Arora (widow), it to be released to her in the form of interest bearing fixed deposit to be taken out from a nationalized bank in her name for a period of seven years along with right to draw periodic interest.

9. The insurer shall be obliged to pay the requisite amount by appropriate deposit with the tribunal within thirty days, making it available to be released.

10. The appeal is disposed of in above terms.

NOVEMBER 06, 2017

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R.K.GAUBA, J.