

\$~R-448

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

Decided on: 09th November, 2017

+ **MAC APPEAL 56/2012**

RAVI SHANKAR SHARMA & ANR. Appellants
Through: **Mr. S.N. Parashar, Advocate**

versus

MOHD. SHAMSHAD & ORS. Respondents
Through: **Mr. Kanwal Chaudhary, Adv.**
for R-3

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

JUDGMENT (ORAL)

1. Neha Sharma, aged 24 years, working with M/s. Genius Consultants Ltd., suffered injuries that proved fatal on account of a motor vehicular accident that took place on 04.10.2008 due to negligent driving of truck bearing registration no.HR-58-5123 which was admittedly insured against third party risk with the third respondent (insurer).

2. Her parents (now the appellants) instituted accident claim case (MACA 67/2010) on 10.02.2009 seeking compensation. The said case was clubbed with another fatal accident claim arising out of the same accident and decided by a common judgment dated 25.07.2011 of the Motor Accident Claims Tribunal (Tribunal) holding the truck driver responsible. In the claim of the appellants, compensation in the

sum of Rs.10,39,700/- was awarded, it inclusive of Rs.10,14,663/- towards loss of dependency, Rs.10,000/- each towards loss of love and affection and loss to estate and Rs.5,000/- for funeral expenses. The liability was fastened on the third respondent (insurer) to pay with interest at the rate of 7.5% p.a.

3. The claimants are in appeal and press it primarily on three grounds. It is argued that the tribunal failed to take into account the element of future prospects of increase and applied the multiplier of 13 wrongly going by the age of the mother of the deceased. The last grievance is that the rate of interest levied is on the lower side.

4. Having heard the learned counsel on both sides and having gone through the record, this court finds that all the three above noted contentions must be accepted, the first two following 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.*

5. The last income of the deceased was taken at Rs.1,56,102/- p.a., this on the basis of income tax return submitted during her lifetime by the deceased. Having regard to the date on which the death occurred, the element of future prospects to the extent of 40% deserves to be added and the multiplier according to the age of the deceased 18 should be applied.

6. Thus, the loss of dependency is re-computed as [Rs.1,56,102/- x 140/100 /2 x 18] Rs.19,66,885.2, rounded off to Rs.19,67,000/- (Rupees Nineteen lakh and sixty seven thousand only).

7. It would be just and proper to bring the non-pecuniary awards also in *sync* with the ruling in *Pranay Sethi* (supra). Thus, instead of the above mentioned awards granted by the tribunal, amount of Rs.15,000/- each are added towards loss to estate and funeral expenses. The total compensation in the case comes to [Rs.19,67,000/- + Rs.15,000/- + Rs.15,000/-] Rs.19,97,000/- (Rupees Nineteen Lakh and ninety seven thousand only). The award is modified accordingly.

8. 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.*]

9. It is noted that the tribunal had apportioned the award granted by it equally amongst the parents. It is directed that the entire enhanced portion of the award with corresponding effect of the rate of interest shall fall to the share of the second appellant (Usha Sharma / mother), it to be released to her in the form of interest bearing fixed deposit receipt taken out from a nationalized bank for a period of seven years with right to draw periodic interest. The insurer is directed to satisfy the enhanced award by requisite deposit with the tribunal within 30 days making it available to be released to the claimant.

10. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 09, 2017/yg