$~R-618 & R-619 *(common order)*

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

Decided on: 01st December, 2017

\+ MAC APPEAL 1089/2012

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LIMITED ... Appellant

Through: Nemo.

versus

KIRAN KUMARI & ORS. ..... Respondents

Through: Mr. O.P. Mannie, Advocate

\+ MAC APPEAL 1252/2012

KIRAN KUMARI & ORS. ... Appellants

Through: Mr. O.P. Mannie, Advocate

versus

LALIT KUMAR & ANR. ..... Respondents

Through: Nemo

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

JUDGMENT (ORAL)

1. Kishan Kumar, aged 31 years, suffered injuries in a motor vehicular accident that had occurred on 22.09.2008, due to negligent driving of motor vehicle described as Rural Transport Vehicle (RTV) bearing registration No.DL-1V-6972 and died in the consequence. His wife and four other members of the family dependent upon him

(collectively, the claimants) instituted accident claim case (Suit No.370/2008) on 21.11.2008. Lalit Kumar, driver-cum-owner of RTV and Bajaj Allianze General Insurance Company Limited (insurer) were impleaded as respondents in the said case.

2. The tribunal held inquiry and, by judgment dated 30.07.2012, awarded compensation in the total sum of Rs.26,37,000/- fastening the liability to pay on the insurer.

3. The insurance company had raised a defence that it could not be called upon to indemnify as there was no permit taken out in respect of the RTV for the period in question. This plea was repelled by the tribunal.

4. The insurer filed appeal (MAC APP.1089/2012) pressing it only to seek recovery rights. In this view, by order dated 12.10.2012 in the said matter, notice was issued only on the limited point, the directions being to the insurer to satisfy the award by requisite deposit with the tribunal in favour of the claimants.

5. The claimants, on the other hand, have also come up with appeal (MAC APP.1252/2012) submitting that the award is deficient, pointing out in this context that while calculating loss of dependency, future prospects have been added only to the extent of 20%, the grievance also concerning the non-pecuniary heads of damages and the rate of interest.

6. These appeals were put in the list of *'Regulars'* by orders dated 24.02.2016. When they are taken up for hearing, there is no appearance on behalf of the insurer.

7. On perusal, it is found that the tribunal repelled the plea of breach on the ground that the RTV was not on the road for any commercial purpose at the relevant point of time. In these circumstances, the appeal of the insurance company is liable to be dismissed.

8. In view of ruling 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 element of future prospects of increase to the extent of 50% deserves to be added in the calculation, it having been proved that the deceased was in regular employment at a salary of Rs.15,000/- per month. Thus, the loss of dependency is re-computed as (15,000/- x 150/100 x 3/4 x 12 x 16) Rs.32,40,000/-.

9. The award under the non-pecuniary heads of damages also have to be brought in *sync* with dispensation in *Pranay Sethi* (supra) and thus in lieu of the non-pecuniary damages awarded by the tribunal, Rs.40,000/- towards loss of consortium and Rs.15,000/- each towards loss of estate and funeral expenses are added.

10. The total compensation is computed as (32,40,000/- + 40,000/- + 15,000/- + 15,000/-) Rs.33,10,000/- (Rupees Thirty Three Lacs and Ten Thousand Only).

11. Following the consistent view taken by this court, the rate of interest is increased 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*.].

12. The award is modified accordingly.

13. It is directed that the entire enhanced portion of the award including the corresponding effect of increase in the rate of interest shall fall to the share of first claimant (Kiran Kumari) widow, it to be released to her in the form of fixed deposit receipt taken out from a nationalized bank for a period of ten years with right to draw periodic interest.

14. The statutory deposit made by the insurer stands forfeited in favour of Delhi High Court Legal Services Committee in view of lack of assistance by it at the hearing.

15. Both the appeals stand disposed of accordingly.

R.K.GAUBA, J.

DECEMBER 01, 2017
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