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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 10th November, 2017

\+ MAC.APP. 483/2016 & CM No.22747/2016(stay)

ORIENTAL INSURANCE CO LTD ..... Appellant

Through: Mr. Bhupender Singh, Ms. Ravi Sabharwal & Mr. Adarsh Sabharwal, Advs.

versus

BHUPINDER SINGH & ORS ..... Respondents

Through: Mr. Manoj Sharma & Mr. Manoranjan, Advs.for R3 & R4.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The accident claim case (suit no. 327/2015) instituted on 09.01.2009 by first and second respondents on their behalf and also on behalf of third and fourth respondents (collectively, the clamaints). The tribunal, by judgment dated 03.03.2016, held that Surjeet Singh, aged 32 years earning his livelihood as a driver, had died in motor vehicular accident that had occurred on 02.01.2008 due to the negligent driving of truck bearing registration no.RJ-02G-8564, it concededly being insured against third party risk with the appellant (insurer) for the period in question. The compensation in the total sum of Rs. 10,86,040/- was awarded with interest at nine per cent (9%) per annum, the liability to pay being fastened against the insurer.

2. The appeal at hand was moved by the insurer to question the computation of compensation both on account of loss of dependency and under the heads of non-pecuniary damages, reliance being placed on the decision of 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.*,

3. The learned counsel for the claimants fairly concedes that the compensation may be modified so as to be in accordance with the ruling in *Pranay Sethi's* Case (supra).

4. It is noted that in absence of any formal proof of employment or of the earnings of the deceased, the tribunal went by the minimum wages of a skilled person i.e. Rs.3940/- per month but added the element of future prospects to the extent of fifty per cent (50%). Given the age at which the death occurred, the deceased being in the category of self employed, such element will have to be restricted to forty percent (40%). Calculated thus, after deduction of one-fourth towards loss of personal and living expenses, and applying the multiplier of 16, loss of dependency is re-calculated as (3940x140/100x3/4x12x16) Rs. 7,94,304/- rounded off to Rs. 7,95,000/-**.**

5. Following the ruling in *Pranay Sethi's* Case (supra), Rs.15,000/- each on account of loss of estate and funeral expenses and Rs. 40,000/- towards loss of consortium are added instead of the non-pecuniary damages granted by the Tribunal. Thus, the total compensation in the case comes to Rs.(795000/-+15000/-+15000/- +40000/-) Rs.8,65,000/- (Rupees Eight Lakhs and Sixty Five Thousand Only). The award is modified accordingly. It shall carry interest as levied by the tribunal. The apportionment of award amongst the claimants as directed by the Tribunal will remain undisturbed.

6. By order dated 03.06.2016, the insurance company had been directed to deposit the entire awarded amount with upto date interest with the tribunal out of which forty per cent (40%) was permitted to be released, the balance kept in fixed deposit account. The tribunal shall recalculate and release the balance payable to the claimants in terms of the modification ordered above and refund the excess if any to the insurance company.

7. Statutory deposit shall be refunded.

8. The appeal is accordingly disposed of.

R.K.GAUBA, J.

NOVEMBER 10, 2017
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