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

Decided on: 6th November, 2017

+ MAC.APP. 987/2011

NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Mr.Pankaj Seth, Advocate

versus

PUSHPA SHARMA AND ORS Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On 29.08.2001, a motor vehicular accident took place involving negligent driving of Tata Indica car bearing registration no.DL-4CM 9076 by the second respondent (driver), the said vehicle being registered in the name of the third respondent (registered owner) at whose instance the appellant (insurer) had issued an insurance policy covering third party risk for the period in question. In the accident, Ashok Kumar, a bachelor, aged 45 years, suffered injuries and died in the consequence. The accident claim case (suit no.05/07/10) was instituted on 04.04.2007 by his mother, seeking compensation impleading the said driver, owner and insurer of the car as party respondents.

2. By judgment dated 05.07.2011, on the conclusion of the inquiry, the tribunal held the car driver guilty of negligence and awarded compensation in the total sum of Rs.2,15,000/- and burdened the insurer to pay the same with interest at the rate of 7.5% p.a., rejecting its plea about breach of terms and conditions of the insurance policy on the ground that the second respondent (driver) was not in possession of a valid driving licence on the date of the accident, this plea sought to be substantiated by evidence led through Pawan Kumar (R3W1), an official from the office of Motor Licensing Officer of Transport Department of Janak puri, New Delhi and Jai Kumar Shah (R3W2), Administrative officer of the insurance company.

3. By the appeal at hand, the insurer questions the computation of compensation primarily on the ground that since the deceased was a bachelor, the claim being for and on behalf of the widowed mother, the multiplier should have been adopted according to her age. The insurer also submits that the tribunal was in error in rejecting the plea of breach of the terms and conditions of the insurance policy.

4. Having heard the learned counsel for the appellant and having perused the tribunal's record, it was noticed that the computation of compensation by the tribunal was erroneous, it actually having been under-assessed, particularly now in light of the decision 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 counsel for the insurer was called upon to reconsider his position but he insisted that the judgment may be set aside on the merits of the contentions urged.

6. The claimant mother had not been able to strictly prove the nature of avocation of the deceased or the earnings accruing to him from the job of a cleaner / conductor in the private bus. In this view, the tribunal adopted Rs.2,592/- as the notional income, it being minimum wages payable to a unskilled worker during the relevant period. It deducted 50% towards personal and living expenses and applied the multiplier of 14, taking the age of the deceased (45 years) as the basis. While this approach cannot be questioned, the deficiency in the calculation has crept in on account of there being no inclusion of the element of future prospects of increase. The tribunal having calculated the amount of loss of dependency at Rs.3,01,728/- proceeded to reduce it to Rs.2,00,000/- on the grounds that the claimant had two other sons both of whom were married, there being nothing on record to show that the deceased was using his income to fulfill the financial needs of the mother. To say the least, this reasoning was most unfair and inappropriate.

7. As per the decision of the Constitution Bench of the Supreme Court in *Pranay Sethi* (supra), the element of future prospects of increase to the extent of 25% will have to be added. The computation is, thus, re-done and the loss of dependency worked out as $[Rs.2,592/- \times 125/100 / 2 \times 12 \times 14]$ Rs.2,72,160/-, which is rounded off to Rs.2,73,000/- (Rupees Two Lakh and seventy three thousand only).

8. Per the dispensation in *Pranay Sethi* (supra), Rs.15,000/- each towards loss to estate and funeral expenses are added. Thus, the total compensation in favour of the first respondent (claimant) is calculated as [Rs.2,73,000/- + Rs.15,000/- + Rs.15,000/-] Rs.3,03,000/- (Rupees Three Lakh and three thousand only).

9. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum (nine percent) 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.*]

10. The tribunal's record would show that the first respondent (driver) had filed a written statement denying his liability. The second respondent (owner) inspite of service would not appear before the tribunal. During the inquiry, the claimant examined herself and two other witnesses. The second respondent (driver) or the third respondent (owner), however, did not participate in the proceedings at that stage. The insurer through its witness (R3W1) proved that the document, copy whereof had been tendered (page 185 of the tribunal's record), as the driving licence of the second respondent, upon verification, had been found to have been not issued by the concerned transport authority. The other witness (R3W2) examined by the insurer proved, *inter alia*, issuance of notice under Order XII Rule 8 of the Code of Civil Procedure, 1908 (CPC) to both the second and third respondents (Ex. R3W2/B) sent by post (Ex. R3W2/B-2) as also under postal certificate (R3W2/B-1) calling upon them to produce, *inter alia*, the driving licence of the second respondent. The evidence led by the

insurer clearly brought out that there was no response by the second or third respondents to the said notices.

11. The tribunal, however, rejected the plea of the insurance company on the ground that it had not examined the officials of any other zonal office of the transport department of Delhi. This approach was not unfair. The insurer cannot be asked to go on a wild goose chase. It had issued and served on the registered owner, as also on the driver, of the offending vehicle notice under Order 12 Rule 8 CPC. Having been served with such notices, it was bounden duty on their part to produce the driving licence. The fact that they did not respond only leads to an inference that there is no driving licence valid or effective for the date of the accident which can be shown. The insurer had taken all the possible steps within its control. It could not be expected to lead negative evidence. Rather, the issue required positive evidence which could be brought only by the second or third respondents. They having failed to participate in the inquiry, also at the stage of appeal, inspite of notice, the irresistible conclusion is that they are unable to show any valid or effective driving licence to be held by the second respondent on the date of the accident.

12. For the foregoing reasons, the insurance company is held entitled to recovery rights against the second and third respondents.

13. Thus, while disposing off the appeal of the insurer the amount of compensation payable to the first respondent is increased as above. The insurance company had been directed by order dated 01.12.2011 to deposit seventy five percent (75%) of the awarded amount with up-to-date interest with the Registrar General. By order dated

21.05.2012, eighty percent (80%) of the amount deposited was permitted to be released to the claimant. The balance lying in deposit shall also now be released to the claimant. The insurance company will pay the remainder of its liability in terms of the modification ordered above by requisite deposit with the tribunal within 30 days. For enforcement of the recovery rights, it shall have the liberty to take out appropriate proceedings before the tribunal.

14. The statutory amount shall be refunded to the appellant after proof of the modified award having been furnished.

15. The appeal is disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 06, 2017

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