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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 15th November, 2017

+ MAC.APP. 512/2016

NATIONAL INSURANCE CO. LTD. Appellant

Through: Mr. Arihant Jain for Ms.
Shantha Devi Raman, Adv.

versus

CHAMKI @ AFSANA & ORS. Respondents

Through: Mr. Neeraj Kr. Jha, Adv. for
claimants.

+ MAC.APP. 509/2016

NATIONAL INSURANCE CO. LTD. Appellant

Through: Mr. Arihant Jain for Ms.
Shantha Devi Raman, Adv.

versus

MUMTAJ HUSSAIN & ORS. Respondents

Through: Mr. Neeraj Kr. Jha, Adv. for
claimants.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On 19.04.2012 at about 5.30 a.m. in the area of Gajrola, Uttar Pradesh, a motor vehicular accident took place involving negligent driving of vehicle described as TATA 407 bearing registration no. UP

24 D 7186 (TATA 407) resulting in several persons suffering injuries, two of them being Furkan Hussain & Tofiq, both of whom died.

2. Several accident claim cases came to be instituted before the motor accident claims tribunal including one (MACT No. 217/2012) by the father of Furkan and another (MACT 218/2012) by the wife, children and father of Tofiq. All the claim cases were clubbed by the tribunal for inquiry and decided by common judgment dated 30.03.2016, whereby it was held that the accident had occurred due to negligence on the part of driver of offending vehicle (Raja Abbas), a respondent in these appeals.

3. The vehicle TATA 407 was registered in the name of Smt. Bhoori, another respondent in these appeals, and insured against third party risk for the period in question with National Insurance company Ltd. (insurer) on which the liability to indemnify was fastened.

4. In the case of claim on account of death of Furkan Hussain, the tribunal awarded Rs. 8,83,160/-, it inclusive of Rs. 7,58,160/-, on account of loss of dependency, Rs. 1,00,000/- for loss of love & affection and Rs. 25,000/- towards funeral expenses.

5. In the case on account of death of Tofiq, the tribunal awarded total compensation in the sum of Rs. 19,98,568/-, it inclusive of Rs. 16,73,568/- on account of loss of dependency, besides Rs. 1,00,000/- each towards loss of love & affection, loss of consortium, loss to estate and Rs. 25,000/- for funeral expenses.

6. In both the cases, the insurance company was called upon to pay with interest @ 9% per annum.

7. The appeals have been brought by the insurer in the two aforesaid cases questioning the calculation of compensation.

8. The tribunal found that the claimants had not been able to bring any concrete evidence on the question of gainful employment or earnings and, therefore, went by the minimum wages of unskilled worker (Rs. 7020/-) in the case of Furkan Hussain and minimum wages of non-matriculate worker (Rs. 7,748/-) in the case of Tofiq as the notional income. In each case, the tribunal added element of future prospects of increase in income to the extent of 50% to which exception is taken by the insurer.

9. The insurer further submits that the non-pecuniary damages awarded in both the cases are excessive.

10. In the case of Tofiq it also questions the loss of dependency pointing out that the father (fourth respondent in MAC Appeal No. 512/2016) had admitted that he himself was earning and, therefore, not dependent on the deceased.

11. In its decision dated 31.10.2017 in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors.*, a Constitution Bench of the Supreme Court has ruled that in case of self-employed persons, the element of future prospects of increase would have a cap of 40% in case death occurs before the age of 40 years. The said cap would apply in both the cases at hand. Therefore, the loss of dependency will have to be recalculated accordingly.

12. A perusal of the record confirms that the fourth respondent in MAC Appeal No. 512/2016, he being the father of the deceased Tofiq in the course of his testimony had conceded that he was himself

gainfully employed and earning his livelihood. In these circumstances, he cannot be treated as a dependent. In this view, in the case of deceased Tofiq the personal & living expenses will have to be deducted to the extent of $1/3^{\text{rd}}$, rather than $1/4^{\text{th}}$.

13. It is, however, noted that the tribunal had committed error in the calculation of compensation in the case of death of Furkan. He was a bachelor and, therefore, the deduction on account of personal & living expenses had to be to the extent of 50%. [*Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121].

14. For the foregoing reasons, the loss of dependency in the case of deceased Furkan is recomputed as $(7020 \times 140 \div 100 \div 1/2 \times 12 \times 18)$ Rs. 10,61,424/-, rounded off to Rs. 10,62,000/-.

15. The non-pecuniary damages awarded by the tribunal would need to be modified since they are not in accord with the ruling in *Pranay Sethi* (supra). Following the dispensation in the said case, amounts of Rs. 15,000/- each towards loss of estate and funeral expenses are added.

16. Thus, the total compensation in the case of death of Furkan is computed as $(\text{Rs.}10,62,000 + 15,000 + 15,000)$, Rs.10,92,000/- (Rupees Ten Lacs Ninety Two Thousand Only). It is noted that instead of being decreased, the amount of compensation on the grounds submitted before this Court needs to be increased. Ordered accordingly.

17. Coming to the case of claim on account of death of Tofiq, the loss of dependency is recalculated as $(7748 \times 140 \div 100 \times 2 \div 3 \times 12 \times 16)$ Rs. 13,88,441.60, rounded off to Rs. 13,89,000/-.

18. Following the ruling in *Pranay Sethi* (supra), an amount of Rs. 40,000/- towards loss of consortium and Rs. 15,000/- each towards loss to estate and funeral expenses are added. Thus, the total compensation is determined as (13,89,000 + 40,000 + 15,000 + 15,000) Rs. 14,59,000/- (Rupees Fourteen Lacs Fifty Nine Thousand Only). The award in the case of death of Tofiq is reduced.

19. Needless to add, in both the claim cases the interest as levied by the tribunal shall also be paid by the insurance company, from date of filing of petition till realization.

20. In MAC Appeal No. 509/2016, relating to the claim of compensation on account of death of Furkan Hussain, the insurance company had been directed vide order dated 19.07.2016 to deposit the entire awarded amount with interest @ 9% p.a. with UCO Bank. Some portion of the said deposited amount was released by orders dated 19.07.2016 and 08.12.2016. Since the amount of compensation has been increased, the entire portion lying in deposit with accrued interest shall be released to the claimant. The insurance company is directed to satisfy the enhanced award with upto date interest with the tribunal within 30 days, so as to be made available to be released to the claimant.

21. In MAC Appeal No. 512/2016, relating to the claim on account of death of Tofiq, by similar order dated 19.07.2017, the insurance company had been directed to deposit the entire awarded amount with upto date interest @ 9% with UCO Bank and some portion was allowed to be released to the claimants, the balance kept in fixed deposit receipts. Some further amount was permitted to be released by

subsequent orders dated 08.12.2016 and 28.04.2017. The registry shall calculate the balance payable to the claimants in terms of the modification ordered above and release the same refunding the excess in deposit with corresponding interest to the insurance company. The award, however, having been reduced in the said case, it is directed that the entire balance shall now fall to the share of the first claimant Chamki @ Afsana alone.

22. Both appeals are disposed of accordingly.

23. The Statutory deposits in both the appeals shall be refunded to the appellant after proof is shown of the award having been satisfied in each claim case.

NOVEMBER 15, 2017
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R.K.GAUBA, J.