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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 21st November, 2017

+ MAC.APP. 1105/2012

NEW INDIA ASSURANCE COMPANY LTD Appellant

Through: Mr. Praveen Sehrawat & Mr.

Abhishek Kumar, Advs.

versus

MAMTA & ORS

..... Respondents

Through: Mr. O.P. Mannie, Adv. for R1 &
R2.

+ MAC.APP. 72/2013

POONAM & ORS.

..... Appellants

Through: Mr. O.P. Mannie, Adv.

versus

ARUN KUMAR & ORS.

..... Respondents

Through: Mr. Praveen Sehrawat & Mr.

Abhishek Kumar, Advs. for R3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Manoj Kumar, holding a diploma in Electrical Engineering, employed on contract basis with Creative Engineers and Consultants, then aged 22 years, suffered injuries in motor vehicular accident that occurred on 29.03.2008 due to the negligent driving of Innova car

bearing registration no.UA-07N-0112, and died in the consequence. The accident claim case (MACT suit no.385/2010) was instituted on 25.04.2008 by the dependant family members including the first and second respondents herein (collectively, the claimants), they being the parents of the deceased seeking compensation. The tribunal held inquiry and, by judgment dated 09.08.2012, granted compensation in the total sum of Rs.17,05,000/-, it inclusive of Rs.16,80,000/- towards loss of dependency, Rs.10,000/- each towards loss of love and affection and loss of estate and Rs.5,000/- towards funeral expenses. The appellant (the insurer) having concededly issued an insurance policy covering the third party risk in respect of the said vehicle for the period in question, was called upon to pay the said compensation with interest of 7.5% per annum.

2. The insurer has come up in appeal (MACA. APP. 1105/2012) to question the computation of compensation submitting that the inclusion of future prospects by the Tribunal for calculating loss of dependency was incorrect. *Per contra*, the claimants have also filed appeal (MACA APP 72/2013) seeking enhanced compensation on the ground that the income of the deceased was wrongly taken as Rs.10,000/- per month and that the dependency loss should have been calculated by applying the multiplier of 18 according to the age of the deceased. The claimants also seek enhanced non-pecuniary damages and rate of interest.

3. The appeal (MACA. APP. 1105/2012) of the insurance company was dismissed in default by order dated 01.02.2016. Application for its restoration (CM No. 2668/2016) is not opposed by

the claimants and therefore the same is allowed. The appeal is restored and taken up for hearing along with the appeal of the claimants.

4. The submission of the claimants about the income of the deceased is found to be correct. Evidence had been led to prove that the deceased was employed with the above-mentioned private entity against a contract of appointment (Ex-PW3/2). While the contract does show, as is also noted by the tribunal, the monthly remuneration to be Rs.12,000/- per month, the other evidence including the salary slips and the TDS certificate (Ex-PW4/3) reveal that the total emoluments earned, inclusive of salary and other allowances all in the range of Rs.1,81,000/- for the period of ten months against which Rs.17,537/- was deducted towards income tax liability. The average total income of the deceased, thus, would come to (1,81,000/- (-) 17,937/-) Rs.1,63,063/-. This would mean the average monthly income of $(1,63,063 \div 10)$ Rs.16,306.30 per month. Following the ruling 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.*, the element of future prospect of increase to the extent of 50% is to be added. This would mean the notional income on which the loss of dependency is to be calculated as Rs. $(16,306 \times 150/100)$ Rs. 24,459/-.

5. It appears from the evidence and pleadings on record that the deceased was married to Poonam (first claimant before the tribunal). She, however, disowned her share seeking to be dropped from the proceedings. The claim was, thus, reduced to one for and on behalf of

the parents. In these circumstances, the submission of the insurance company is that deduction on account of personal and living expenses is to be made to the extent of 50%, deserves to be registered.

6. The tribunal, however, fell into error by adopting the multiplier of 14 according to the age of mother. Having regard to the ruling 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.*, and an earlier judgment of the Supreme Court reported as *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 ACJ-1298, the multiplier has to be chosen according to the age of the deceased which in the present case would be 18.

7. Thus, the loss of dependency is re-computed as Rs.(24459/2x12x18) Rs.26,41,572/- rounded off to Rs.26,42,000/-. The non-pecuniary damages also have to be brought in accord with the dispensation in *Pranay Sethi* (supra). The amounts of Rs. 15,000/- each towards loss of estate and funeral expenses are added.

8. Consequently, the total compensation payable in the course is calculated as (26,42,000+15,000+15,000) Rs.26,72,000/- (Rupees Twenty Six Lacs and Seventy Two Thousand only). The award is modified accordingly. 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. By order dated 15.10.2012 in MAC APP 1105/2012, the insurance company was directed to deposit 60% of the award with upto date interest. By subsequent order dated 05.03.2013, 50% of the award was released to the claimants. Since the awarded amount has now been increased, the entire balance lying in deposit shall also be released to the claimants in terms of the judgment of the tribunal.

10. The insurance company is directed to satisfy the balance of its liability under the modified award with the tribunal within 30 days. It is directed that the balance amount to be deposited including the amount payable on account of increased rate of interest shall fall to the share of the claimant Mamta (mother) only to be released to her in the form of fixed deposit receipt taken out from a nationalized bank for a period of 10 years.

11. The statutory amount deposited by the insurance company shall be refunded after proof of the award having been satisfied is furnished.

12. Both the appeals stand disposed of.

NOVEMBER 21, 2017

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R.K.GAUBA, J.