$~R-635

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

***Decided on: 4th December, 2017***

\+ MAC APPEAL No.1133/2012 & CM APPL.18243/2012

ORIENTAL INSURANCE COMPANY LIMITED

... Appellant

Through: Mr. Pradeep Gaur, Advocate

versus

LATA & ORS. ..... Respondents

Through: Nemo.

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

**JUDGMENT (ORAL)**

1. Ram Avtar, aged 47 years, earning his livelihood as a fruit vendor, suffered injuries in a motor vehicular accident that had occurred on 21.01.2009, due to negligent driving of motor vehicle described as bus bearing registration No.DL-1PB-4792 and died in the consequence, the said vehicle admittedly having been insured against third party risk with the appellant (insurer) for the period in question. On accident claim case (MACT No.812/10), instituted by his wife and three other family members dependent upon him, they being first to fourth respondents (collectively, the claimants), the tribunal held inquiry and, by judgment dated 29.08.2012, awarded compensation in the total sum of Rs.10,35,184/-, fastening the liability to pay with interest @ 9% per annum on the insurer.

2. The insurer presses the appeal challenging the said award on the ground that the future prospects which have been added to the extent of 30% over and above the minimum wages of Rs.3683/- as the bench mark, should have been reduced to 25% in view of the 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.* and that, for the same reason, non-pecuniary heads of damages in the sum of Rs.50,000/- for loss of consortium, Rs.25,000/- for funeral charges, Rs.1,00,000/- towards loss of estate, Rs.2,00,000/- for loss of company, love and affection and Rs.1,00,000/- for loss of care, attention and expenses be set aside and reduced.

3. The appeal was put in the list of *'Regulars'* by order dated 08.02.2016, and on being taken up at its own turn, there is no appearance for the respondents. Learned counsel for the insurer has been heard and record perused.

4. The submission of the insurer to above effect must be accepted in view of the ruling in *Pranay Sethi* (supra). Thus, the loss of dependency is re-computed as (3683/- x 125/100 x 3/4 x 12 x 13) Rs.5,38,638.75/- rounded off to Rs.5,39,000/- (Rupees Five Lacs Thirty Nine Thousand Only).

5. The awards under the non-pecuniary heads of damages have to be brought in *sync* with dispensation in *Pranay Sethi* (supra). In lieu of 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. Thus, the total compensation is

computed as (5,39,000/- + 40,000/- + 15,000/- + 15,000/- ) Rs.6,09,000/- (Rupees Six Lacs Nine Thousand Only).

6. The award is modified accordingly. It shall carry interest as levied by the tribunal.

7. By order dated 19.10.2012, the insurer was directed to deposit fifty percent (50%) of the awarded amount along with interest with the tribunal and upon such deposit the same was ordered to be released to the claimants.

8. The insurer is directed to satisfy the award, as modified above, by requisite deposit with upto date interest with the tribunal within 30 days, making it available to be released to the claimants, in terms of the impugned award.

9. The statutory amount shall be refunded to the appellant, after the proof of award having been satisfied is shown.

10. The appeal along with pending application stands disposed of in above terms.

**R.K.GAUBA, J.**

**DECEMBER 04, 2017**
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