

\$~R-634

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 4th December, 2017

+ MAC APPEAL No.1132/212 and CM No.18211/2012

UNITED INDIA INSURANCE COMPANY LIMITED

... Appellant

Through: Mr. Priyadarsi Acharya, Advocate

versus

VINDRAWATI & ORS.

..... Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. By judgment dated 18.09.2012, on the file of the accident claim case (Case No.31/09), instituted on 05.07.2007 by the first to sixth respondents (collectively, the claimants), the tribunal held inquiry and upheld the contention that Ghanshyam, aged 34 years, had suffered injuries in a motor vehicular accident that had occurred on 02.02.2003, due to negligent driving of motor vehicle described as truck, bearing registration No.DDL-3174 and died in the consequence on 15.12.2005. It awarded compensation in the total sum of Rs.8,73,992/- and fastened the liability on the appellant (insurer) to pay, it having concededly issued an insurance policy covering third party risk in respect of such vehicle for the period in question. The said amount of compensation includes Rs.1,23,000/- towards loss of

earning capacity, Rs.50,000/- towards special diet, Rs.50,000/- towards loss of enjoyment of life, Rs.5,20,992/- towards loss of dependency, besides Rs.1,00,000/- towards loss of love and affection and Rs.10,000/- each for funeral charges, loss of consortium and loss to estate. The insurer was called upon to pay with interest @ 7.5% per annum.

2. The insurer had taken the defence that there was no liability as there was breach of terms and conditions of the insurance policy, there being no permit taken out in respect of the vehicle in question. This plea was rejected.

3. The appeal is pressed by the insurer to take exception to the inclusion of the award of loss of earning capacity and Rs.50,000/- towards loss of enjoyment of life, the argument being that the former was uncalled for as the loss of dependency had been worked out separately and that the latter amount was under the non pecuniary heads of damages which being personal in nature and consequently not survive. The insurer also presses its plea of breach of terms and conditions of the insurance policy.

4. It is noted that the evidence proved before the tribunal that on the date of accident the deceased was 34 years old. Having suffered injuries on 02.02.2003, he died on 15.12.2005 i.e. after 34 months. The claimants had not led any evidence to prove the medical expenditure incurred during the period of 34 months for which the victim survived. It was, however, proved that he was rendered in a vegetative stage and, thus, virtually unable to earn. There was corresponding loss of future income during the said period which

required to be compensated. The loss of income during the period of such survival, therefore, cannot be grudged. However, the second contention mentioned above, is found to be correct. The loss of enjoyment of life was such head of damages as was personal and, therefore, will have no place in the compensation awarded to the legal heirs dependent upon the family members.

5. It is made clear that the above would not adversely affect the calculation of loss of dependency as has been computed with the multiplier of 16, which would continue to apply notwithstanding the death after 34 months of the injury.

6. The non pecuniary heads of damages, however, are not in sync with the dispensation 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.* The non-pecuniary damages as noted above, therefore cannot be upheld and in lieu thereof, Rs.40,000/- towards loss of consortium and Rs.15,000/- each towards loss to estate and funeral expenses are added. Thus, there would be a net reduction in the award by (50,000/- + 60,000/-) Rs.1,10,000/-.

7. The award of compensation is, thus, reduced to (8,73,992/- - 1,10,000/-) Rs.7,63,992/- rounded off to Rs.7,64,000/- (Rupees Seven Lacs and Sixty Four Thousand Only).

8. Following the consistent view taken by this Court, the rate of interest is increased to nine per cent (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. The award is modified accordingly.

10. There is merit in the contention of the insurance company about the breach of terms and conditions of insurance policy. It had examined Shyam Nandan (R3W1) to prove, *inter alia*, the issuance of notice under Order XII Rule 8 of the Code of Civil Procedure, 1908 to the driver and owner of the offending vehicle, they being seventh and eighth respondents respectively. The evidence of the said witness remained unimpeached and unchallenged. The said respondents have failed to appear to resist the appeal. Till date, no effort has been made on their behalf to prove that there was a valid permit taken out in respect of the offending vehicle. The failure of the police to prosecute the owner of the offending vehicle for plying a vehicle without a valid permit cannot come in the way of the insurance company to prove otherwise.

11. In the given facts and circumstances, it was the bounden duty of the registered owner or the driver to prove by positive evidence, the existence of such valid permit. Since no effect has been made in that direction, it has to be inferred that there was no valid permit in existence. Thus, the plea of the insurance company is accepted and it is granted recovery rights against the seventh and eighth respondents for enforcement. It shall have the liberty to approach the tribunal by appropriate execution application.

12. By order dated 19.10.2012, the insurer was directed to deposit fifty per cent of the awarded amount along with interest with the tribunal, which was ordered to be released to the claimants.

13. The insurer is directed to deposit the remainder of its liability along with upto date with the tribunal within thirty days, making it available to be released to the claimants.

14. The statutory amount shall be released to the insurer, after proof of award having been satisfied is shown.

15. The appeal along with accompanying application stand disposed of in above terms.

DECEMBER 04, 2017

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R.K.GAUBA, J.