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

Decided on: 05th December, 2017

+ **MAC APPEAL 1146/2012**

**RELIANCE GENERAL INSURANCE COMPANY
LTD.**

..... Appellant

Through: Mr. Shoumik Mazumdar,
Advocate

versus

JAYA GURUWARA AND ORS.

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Girish Guruwara, aged 22 years, a bachelor, student of the fourth year of the course leading to the degree of Bachelor of Engineering in Computer Science, suffered injuries in a motor vehicular accident that had occurred on 12.12.2009 due to negligent driving of a motor vehicle described as one bearing registration no.MP-41H-0149 and died in the consequence. On the accident claim case (MACP no.251/2010), instituted on 24.05.2010 by his parents, first and second respondents (collectively, the claimants), the Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 21.08.2012 awarded compensation in the sum of Rs.19,04,500/- fastening the liability to pay on the appellant (insurer), it admittedly having issued an insurance policy covering third party risk for the

period in question in respect of the offending vehicle. The amount of compensation awarded includes Rs.18,64,500/- towards loss of dependency, Rs.25,000/- for loss of love and affection, Rs.10,000/- for loss to estate besides Rs.5,000/- for funeral expenses.

2. The insurer filed the present appeal and presses it to question the calculation of loss of dependency and the non-pecuniary damages awarded. It submits that the conclusion reached by the tribunal that the deceased was earning Rs.2,40,000/- p.a. is unfounded.

3. The appeal was put in the list of 'Regulars', to come up on its own turn, by order dated 11.02.2016. When it is taken up in its own turn, there is no appearance for the claimants. The learned counsel for the insurer has been heard and with his assistance, the record perused.

4. The claimants had examined Naresh Kalani (PW-2) of M/s. N.K. Engineering Works to prove that an offer of appointment in future (Ex. PW1/16) had been issued to the deceased. It is, however, noted that when cross-examined, the witness conceded that there was nothing on record to show that he was the proprietor of the said entity, he having got no record showing even its existence. The claimants made no effort thereafter to affirm the necessary facts. Even if the document (Ex. PW1/16) in question is to be taken on its face value, it was merely an offer of appointment in future. The deceased was still a student and had not yet attained the necessary qualification on the basis of which he would eventually be employed. In these circumstances, the assumption of income on such basis is incorrect.

5. In the facts and circumstances, this court is left with no option but to proceed on the basis of notional income which in the present

case may be taken as the minimum wages payable to a graduate (Rs.4,713/-) during the relevant period as the benchmark.

6. It is noted that the tribunal fell into error by adopting the multiplier of 11 according to the age of the claimant mother. Following the rulings 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 the ruling in *Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the multiplier has to be chosen as per the age of the deceased and thus should be 18. In view of *Pranay Sethi* (supra), the element of future prospects of increase in income to the extent of 40% would also have to be factored in. Therefore, the loss of dependency is calculated as $[Rs.4,713/- \times 140/100 / 2 \times 12 \times 18]$ Rs.7,12,605.60, rounded off to Rs.7,13,000/-.

7. In view of the dispensation in *Pranay Sethi* (supra), Rs.15,000/- each is added towards loss to estate and funeral expenses. Thus, the total compensation in the case comes to $[Rs.7,13,000/- + Rs.15,000/- + Rs.15,000/-]$ Rs.7,43,000/- (Rupees Seven lakh and forty three thousand only).

8. The award is modified accordingly.

9. 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.*]

10. By order dated 02.11.2012, the insurance company had been directed to deposit 60% of the awarded amount with proportionate

interest with UCO Bank, Delhi High Court Branch and by order dated 04.04.2013, some amount was released to the claimants. The balance lying in deposit would be refunded to the insurance company. If excess has been paid, the insurance company will have the liberty to take out appropriate proceedings for its recovery. Conversely, if there is any deficiency in the payment, the insurer will make requisite deposit with the tribunal within 30 days making it available to be released to the claimants.

11. The statutory amount shall be refunded to the insurance company after proof is shown of the award having been satisfied.

12. The appeal is disposed of in above terms.

DECEMBER 05, 2017

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R.K.GAUBA, J.

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