

\$~R-654

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 6th December, 2017

+ MAC.APP.1182/2012

RELIANCE GENERAL INSURANCE CO LTDAppellant

Through: Mr. A.K. Soni, Advocate.

versus

RENU CHAUDHARY & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Subodh Kumar, then aged less than 45 years old (born on 02.07.1965), working for gain in a private company (M/s Sona Koyo Steering Systems Ltd.), suffered injuries in motor vehicular accident that occurred on 31.03.2010, due to negligent driving of Tractor bearing registration No. HR-29H-7976 and died in consequence. His wife and three other members of the family dependent upon him (collectively, the claimants, being first to fourth respondents) instituted accident claim case (Suit No.267/10) on 26.05.2010 seeking compensation.

2. The Tribunal, by its judgment dated 13.08.2012, held that the accident and death had been caused due to negligent driving of the said vehicle. It awarded compensation in the total sum of Rs.55,75,000/-, directing the insurer (the appellant) of the offending vehicle to pay with interest @ 7.5% per annum to the claimants, the

said amount inclusive of Rs.10,000/- each towards funeral expenses, loss of consortium and loss to estate and Rs.25,000/- towards loss of love and affection.

3. The insurer, by the appeal at hand, questions the finding on the issue of negligence submitting that there was no evidence led in this regard. It also questions, the calculation of loss of dependency on the ground, that the father (the fourth respondent) has been wrongly treated as dependent.

4. The learned counsel for the appellant has been heard and with his assistance, the record perused.

5. It is noted that the Tribunal has gone by the principle of *res ipsa loquitur*, taking into account the facts and circumstances relating to the accident, there being no evidence led on the contrary by any of the party respondents. In these circumstances, the said finding does not call for any interference.

6. The claimants had led evidence, *inter alia*, by examining the first of them, namely, Renu Chaudhary (PW-1), who deposed on the strength of her affidavit (Ex.PW1/1) affirming the claim case. No effort was made at that stage to bring out any facts to show that the father could not be a claimant on account of he being self reliant. Therefore, the question raised on account of loss of dependency is repelled.

7. It is, however, noted that the non-pecuniary damages awarded by the Tribunal are not in sync with the dispensation in a 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. Thus, in lieu of the awards granted by the Tribunal, Rs.40,000/- towards loss of consortium and Rs.15,000/- each towards loss of estate and funeral expenses are added. Consequently, the award would need to be increased by Rs.15,000/-. It is raised to Rs.55,90,000/- (Rupees Fifty Five Lakhs and Ninety Thousand Only). Needless to add, it shall carry interest as levied by the Tribunal.

8. The argument about the breach of terms and conditions of the insurance policy on the ground that Tractor is an agricultural vehicle has been properly dealt with by the Tribunal, particularly with reference to the admission of Sh. Navneet Goel (R3W1) examined by the insurer to the effect that there is no requirement of any permit in respect of said vehicle. The plea is, thus, rejected.

9. By order dated 09.11.2012, the insurance company had been directed to deposit 80% of the awarded amount with up to date interest with UCO bank, Delhi High Court Branch. By order dated 29.04.2013, 50% of the deposited amount was permitted to be released to the claimants. The registry shall release the balance lying in deposit with accrued interest to the claimants in terms of the judgment of the Tribunal. The insurance company shall satisfy the enhanced amount by requisite deposit with the Tribunal within 30 days.

10. The statutory amount be refunded to the insurer after proof of award having been satisfied is shown.

11. The appeal stands disposed of in above terms.

R.K.GAUBA, J.

December 6, 2017//srb