$~R-469 & 470

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

Decided on: 13th November, 2017

\+ MAC.APP. 294/2012

RELIANCE GENERAL INSURANCE COMPANY LTD. ... Appellant

Through: Mr. Arun Yadav, Advocate

versus

SUDHIR KUMAR GUPTA & ORS. ..... Respondents

Through: Mr. O.P. Mannie, Adv. for R-1 & 2

\+ MAC.APP. 1078/2013

SUDHIR KUMAR GUPTA & ORS. ... Appellants

Through: Mr. O.P. Mannie, Advocate

versus

RELIANCE GENERAL INSURANCE COMPANY LTD. ..... Respondents

Through: Mr. Arun Yadav, Adv. for R-1

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

JUDGMENT (ORAL)

1. Vaibhav Gutpa, son of the claimants (appellants in MACA 1078/2013, who are also first and second respondents in MACA 294/2012) died in a motor vehicular accident that had occurred on 21.09.2010 due to the negligent driving of a car bearing registration

no.DL-8C-NA-1952 admittedly insured against third party risk for the period in question with Reliance General Insurance Company Ltd. (appellant in MACA 294/2012 and first respondent in MACA 1078/2013).

2. On the accident claim case (MACT no.567/2010), it also relating to the injuries suffered by Sahil Jolly, the Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 21.12.2011, held that the accident was caused due to negligent driving of the said car by Pritam (driver), it being registered in the name of the Ram Swaroop (owner) and, thus, holding each of them jointly and severally liable to pay the compensation. The compensation on account of death of Vaibhav Gupta was determined in the total sum of Rs.8,47,448/-, it having been calculated thus :-

Loss of dependency	Rs.8,12,448/-
Loss of love and affection	Rs.20,000/-
Loss of Estate	Rs.10,000/-
Funeral Expenses	Rs.5,000/-
Total	Rs.8,47,448/-

3. The insurer had raised the contention that it could not be held liable to pay, as the cheque tendered for payment of premium, upon presentation at the bank, had been dishonoured and that the policy had been cancelled by way of appropriate communication. The tribunal accepted the plea and directed the insurer to pay the compensation but granted it recovery rights against the driver and the owner.

4. The tribunal did not levy any interest on the principal amount of compensation but directed that it shall be paid by the insurer to the

claimants within 30 days and in case of default added the liability of interest at the rate of 12% p.a. for the period of delay.

5. The insurer presses its appeal (MACA 294/2012) on the grounds that in calculating the loss of dependency, the tribunal wrongly added the element of future prospects of increase in income to the extent of 50%. It is the submission of the insurer that the penal rate of interest on account of delay was uncalled for. It also questions the direction of the tribunal to pay and recover with the submission that instead, in the facts and circumstances, the insurer should have been totally exonerated.

6. *Per contra*, the claimants by their appeal (MACA 1078/2013) submit that the tribunal has failed to grant any interest on the principal amount of compensation which has rendered the award deficient. The claimants further submit that the tribunal fell into error by adopting the multiplier of 14 according to the age of the mother. It is the submission of the claimants that the view taken by the tribunal in requiring the insurance company to pay and then recover was just and appropriate.

7. The employment or regular earnings of the deceased could not be proved by concrete evidence. Thus, the tribunal was constrained to go by minimum wages of the matriculate (Rs.6448/- p.m.) Following the dispensation 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.*, in the given facts and circumstances, the element of future prospects over and above the notional income could not have been more than 40%. Having regard

to the rulings of the Supreme Court in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121* and *Pranay Sethi* (supra), the multiplier of 18 will have to be invoked as the age of the deceased on the relevant date was 21 years.

8. The loss of dependency is, thus, re-calculated as [Rs.6,448/- x 140/100 / 2 x 12 x 18] Rs.9,74,937.60, rounded off to Rs.9,75,000/- (Rupees Nine lakh and seventy five thousand only).

9. The non-pecuniary damages as granted by the tribunal would also need to be re-visited. Following the ruling in *Pranay Sethi* (supra), Rs.15,000/- each towards loss to estate and funeral expenses are added to the compensation. Thus, the total compensation in the case comes to [Rs.9,75,000/- + Rs.15,000/- + Rs.15,000/-] Rs.10,05,000/- (Rupees Ten lakh and five thousand only). The award is modified accordingly.

10. There was no reason why the claimants should not have been granted the benefit of interest over and above the principal amount of compensation from the date of filing of the claim petition. Following the consistent view taken by this court, levy of interest at the rate of 9% p.a. (nine percent) from the date of filing of the petition till payment is added. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.].

11. However, the levy of penal interest at the rate of 12% p.a. post the period of 30 days after the impugned judgment being not justified, is set aside.

12. The insurance company concededly had issued the cover note. The insurance policy having been cancelled, it has been granted

recovery rights against the driver and owner of the insured vehicle. Thus, its rights are duly protected. It will not be fair to deny the benefit to the third parties. Therefore, the plea for total exoneration is rejected.

13. By order dated 20.03.2012 in MACA 294/2012, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General within the period specified. In terms of order dated 13.03.2013, sixty percent (60%) of the deposited amount was permitted to be released to the claimants as per the terms and conditions imposed by the tribunal. In the given facts and circumstances, it is directed that the amount of compensation already received by the first claimant Sudhir Kumar Gupta (father) shall be treated as his share, the entire balance now going to the second claimant Meena Gupta (mother) only. The Registry shall release the balance lying in deposit accordingly to the second claimant. The insurer will be obliged to satisfy the balance of its liability towards the claimant by requisite deposit with the tribunal under the modified award, within 30 days, making it available to be released to the claimant.

14. It is clarified that the modification of the award does not affect the recovery rights granted to the appellant in MACA 294/2012 against the driver and owner of the offending vehicle.

15. The statutory amount shall be refunded to the insurance company.

16. Both appeals are disposed of in above terms.

Dasti.

R.K.GAUBA, J.

NOVEMBER 13, 2017
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