$~R-653

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 6th December, 2017

\+ MAC.APP.1181/2012 & CM No. 19072/2012

NEW INDIA ASSURANCE COMPANY LTD ..... Appellant
Through: None.

versus

NIRMALA DEVI & ORS. ..... Respondents
Through: None.

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

JUDGMENT (ORAL)

1. The accident claim case (MACT No. 24/11), was decided by the Motor Accident Claims Tribunal, by judgment dated 25.08.2012, whereby compensation in the sum of Rs.13,34,536/- has been awarded with interest @ 12% per annum, in favour of the first to fourth respondents (collectively, the claimants), on account of death of Dhina Kamti, in a motor vehicular accident that occurred on 18.08.2010, due to negligence on the part of the driver of vehicle insured with the appellant (insurer).

2. The Tribunal included in the above said award Rs.8,64,536/- towards loss of dependency, Rs.50,000/- for loss of consortium, Rs.20,000/- towards funeral charges, Rs.1,00,000/- each for loss of estate and loss of care, attention & expenses, besides Rs.2,00,000/-

under the head of loss of company, love and affection etc. The insurer filed the present appeal questioning the said award, submitting it was excessive.

3. The appeal was put in the list of "Regulars" as per order dated 12.02.2016. When it is called out for hearing at its own turn, there is no appearance on behalf of the appellant.

4. The record has been perused and 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.*, need for correction is noticed.

5. The Tribunal found from the evidence led that the deceased was aged 45 years and thus, correctly invoked the multiplier of 14. There was no clear proof of the income of the deceased, the claim being he was earning his livelihood from manual labour. The Tribunal notionally assessed the income with the help of minimum wages (Rs.5278/-) and, correctly so, but added future prospects to the extent of 50%, which need to be brought down to 25% in view of the ruling in *Pranay Sethi* (*supra*). Similarly, the awards under the non-pecuniary heads of damages need to be brought in *sync* with the dispensation in *Pranay Sethi* (*supra*).

6. The loss of dependency is thus, re-computed as (5278 X 125/100 X 3/4 X 12 X 14) Rs.8,31,285/- rounded off to Rs. 8,32,000/-. Adding Rs.40,000/- towards loss of consortium and Rs.15,000/- each for loss to estate and funeral expenses, the total compensation comes to (8,32,000 + 40,000 + 15,000 + 15,000) Rs.9,02,000/- (Rupees Nine Lakhs and Two Thousand Only). The award is modified accordingly.

7. There are no special reasons indicated in the impugned judgment for levy of interest @ 12% per annum, which undoubtedly is higher than ordinary. 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*.].

8. By order dated 09.11.2012, the insurance company had been directed to deposit 60% of the award amount with up-to-date interest with the Tribunal and upon such deposit being made, it was permitted to be released to the claimants. Since the award has been modified in above terms, it is possible that excess amount has been released to the claimants. If so, the excess paid will have to be refunded and in case of default, the insurance company will have the liberty to take out appropriate proceedings before the Tribunal. Conversely, if the payment made is deficient, the insurance company will be obliged to deposit the balance of its liability with the Tribunal within 30 days making it available to be released to the claimants.

9. Since the insurance company did not appear at the final hearing to give assistance, the statutory amount deposited is forfeited as costs in favour of Delhi High Court Legal Services Committee.

10. The appeal and the pending application stand disposed of accordingly.

R.K.GAUBA, J.

December 6, 2017
srb