

\$~ R-663 & R-664

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 7th December, 2017

+ MAC.APP. 1201/2012

NATIONAL INSURANCE CO LTD Appellant
Through: Mr. Pankaj Seth, Advocate.

versus

LALITA AND ORS Respondents
Through: None.

+ MAC.APP. 263/2016

LALITA AND ANR ...Appellants
Through: None.

versus

NATIONAL INSURANCE CO LTD Respondent
Through: Mr. Pankaj Seth, Advocate.

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

JUDGMENT (ORAL)

1. Mukesh Yadav, aged 31 years, suffered injuries that proved fatal, due to a motor vehicular accident, on account of negligent driving of Truck bearing registration No.HR-63-8841, admittedly insured against third party risk with National Insurance Company Limited (the insurer).
2. The accident claim case (Case No. 887/08), came to be registered on 28.07.2008, *inter alia*, on the basis of detailed accident

report (DAR) submitted by the local police, on the basis of evidence gathered during the investigation of the corresponding criminal case that had been registered.

3. The Tribunal held inquiry and, by judgment dated 10.10.2012, held that the truck had been driven in a negligent manner by Harwinder Singh (driver), a respondent in these appeals. Since the truck was registered in the name of Sandeep Kumar (owner), another respondent in these appeals, both the said driver and owner were held, jointly and severally, liable to pay.

4. The insurer, also a party respondent before the Tribunal, had taken the plea that there was no valid or effective driving licence or permit in respect of the truck and, thus, a case of breach of terms and conditions of the policy had been made out, in which view, it should be exonerated from the liability to pay. It led evidence of Anita Poddar (R3W1), an official of the insurer.

5. The Tribunal, however, rejected the aforesaid evidence and declined to grant any benefit to the insurance company calling it upon to pay the compensation, which had been determined in the sum of Rs.7,66,653/-, to which interest levied at 7.5% per annum had been added, the said amount inclusive of Rs.6,36,653/- as loss of dependency, Rs.10,000/- each towards funeral charges, loss of consortium and loss of estate and Rs.1,00,000/- towards loss of love and affection.

6. The insurer came up with appeal (MAC. Appeal No. 1201/2012) on the contention that the calculation of loss of dependency is incorrect as the fourth claimant Mohini @ Hemlata (the

widow) had been shown, by evidence, to have abandoned the society of the deceased husband two weeks after the marriage. The insurer also questions the award under the non-pecuniary heads of damages.

7. *Per contra*, the claimants filed cross-objection (CM No.13499/2015) which was treated as an independent appeal and registered accordingly (MAC. Appeal No. 263/2016), as per order dated 16.03.2016. By the said cross appeal, the contention raised was that the award is deficient, the income should have been assumed at Rs.8,000/- per annum and that non-pecuniary heads of damages and rate of interest levied are low.

8. Both the appeals were put in the list of “Regulars” as per order dated 16.03.2016. When they are called out, in their own turn, there is no appearance on behalf of the claimants. Learned counsel for the insurer has been heard and the record perused with his assistance.

9. It does appear that during the course of inquiry, Lalita (PW-1), mother of the deceased, one of the claimants, had testified to the effect that the fourth claimant (widow of the deceased), after marriage with him on 11.02.2008, had left his society within 14 days. Unfortunately, her husband died on 18.04.2008, less than two months after what appears to be a marital discord leading to the separation of the wife and husband. But, there is nothing to show that such separation of wife from the husband was final or with no hope or scope for any reconciliation. There is nothing to show that the parties had decided to part ways thereafter so as to never re-unite. In these circumstances, it will not be fair to assume that the wife had ceased to be a dependent

on the deceased husband. Thus, the argument of error in the rate of deduction on account of personal and living expenses is rejected.

10. The record would show that the claimants had not been able to muster any clear evidence about the earnings of the deceased. In this view, the application of minimum wages by the Tribunal cannot be faulted with. There is no case made out for any assumption that the deceased was earning Rs.8,000/- per month.

11. The non-pecuniary heads of damages, as awarded by the Tribunal, instead of requiring to be increased, would have to be decreased in view of the dispensation by 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.* Following the said ruling, in lieu of the awards granted by the Tribunal, Rs.40,000/- towards loss of consortium and Rs.15,000/- for loss to estate and funeral expenses are awarded. Thus, the compensation is reduced to (6,36,653 + 40,000 + 15,000 + 15,000) Rs.7,06,653/- rounded off to Rs.7,07,000/- (Rupees Seven Lakhs Seven Thousand Only).

12. Following the consistent view taken by this Court, the rate of interest is increased to 9% (nine percent) 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.*].

13. The insurance company had proved, through R3W1, that it had issued a notice under Order XII Rule 8 of Code of Civil Procedure, 1908, (CPC) to the driver and the owner of the offending vehicle. The

said evidence remained unchallenged. There was no response to the notice from the driver or owner of the offending vehicle. They did not lead any evidence to bring on record any valid driving licence or permit during the course of inquiry before the Tribunal. They would not adduce any such material even in answer to the appeal of the insurance company. In these circumstances, the natural inference is that they are unable to show to the Court any such documents. Therefore, the insurance company must be held to have succeeded in bringing home its case of breach of terms and conditions of the policy. In the fitness of things, it would, however, be proper to grant it recovery rights rather than allow it to be totally exonerated.

14. The insurance company is hereby granted recovery rights against driver and owner (the fifth and sixth respondents in MAC. Appeal No.1201/2012), namely, Harwinder Singh and Sandeep Kumar. The insurer is at liberty to take out appropriate proceedings before the Tribunal.

15. The apportionment of the award as granted by the Tribunal shall not be disturbed.

16. By order dated 21.11.2012, the insurance company was directed to deposit 75% of the awarded amount with up to date interest. In terms of order dated 29.01.2014, Rs.1,50,000/- each were released to the first and second claimant. The Tribunal shall now calculate the balance of the amount payable to the claimants under the modified award along with interest and release the same to them accordingly. The insurance company will be liable to deposit balance of its liability

under the modified award with the Tribunal within 30 days, to be made available to be released to the claimants.

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

18. Both the appeals stand disposed of in above terms.

R.K.GAUBA, J.

DECEMBER 7, 2017

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