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

Decided on: 08th November, 2017

\+ MAC.APP. 1135/2011 and CM 8812/2012

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LTD. ..... Appellant
Through: Ms. Suman Bagga, Mr. Pankaj Gupta and Ms. Anjali Chawla, Advocates

versus

SMT. KELA & ORS. ..... Respondents
Through

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

<u>JUDGMENT (ORAL)</u>

1. Budh Singh, aged 55 years, working as a permanent employee of Municipal Corporation of Delhi at the net salary of Rs.17,000/- (after deduction of tax liability), died in a motor vehicular accident that took place on 02.07.2010, proven to have been caused due to negligent driving by the third respondent (who is also the owner) of motor vehicle described as Tata 407 bearing registration no.HR-38H-4842 which was concededly insured against third party risk for the period in question with the appellant (insurer). His wife and son, they being the first and second respondents (collectively, the claimants), instituted accident claim case (MACT 107/2011) on 18.09.2010, seeking compensation.

2. The Motor Accident Claims Tribunal (Tribunal), by its judgment dated 16.08.2011, accepted the case of death having been caused due to the negligent driving of the said vehicle. It awarded the compensation in the sum of Rs.15,80,000/-, calculating it thus :-

Loss of dependency	Rs.15,00,000/-
Loss of love and affection	Rs.50,000/-
Loss of consortium	Rs.10,000/-
Funeral and transport expenses	Rs.10,000/-
Loss to estate	Rs.10,000/-
TOTAL	Rs.15,80,000/-

3. The liability to pay the aforesaid amount was fastened on the insurer, which is in appeal to question the computation.

4. It is the contention of the insurance company that the son (second respondent) of the deceased was 27 years old and therefore, could not have concededly been treated as a dependent. This plea must be rejected. The said claimant had appeared in witness box as PW-1 on the strength of his affidavit (Ex. PW1/A). Undoubtedly, he was 27 years old at the relevant point of time. But such age itself cannot mean that he would not be dependent on the father. During cross-examination, it was brought out that he secured a job after the fatal accident on compassionate grounds with MCD. Assumably, he was in search of a job or did not have any regular source of income prior to such appointment on compassionate grounds. No questions were asked during cross-examination on the issue of his dependency. In these circumstances, the inclusion of the said claimant amongst the dependents and, consequently, deduction of one-third towards personal and living expenses of the deceased is appropriate.

5. The counsel for the insurance company then submitted that the first claimant (widow) had died during the inquiry into the claim petition. The right to receive compensation had crystallized and vested on the date the cause of action arose. The said right cannot be defeated by subsequent death in a fatal accident claim case. The argument in this regard is thus repelled.

6. It is found that the tribunal has committed an error in calculating the appropriate dependency loss since it did not include the element of future prospects. It is the obligation of this court to ensure that just compensation is awarded. Having regard to 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.*, 15% future prospects of increase in income will have to be factored in.

7. Thus, the dependency loss is re-calculated as [Rs.17,000/- x 115/100 x 2/3 x 12 x 11] Rs.17,20,400/- (Rupees seventeen lakh twenty thousand and four hundred only).

8. The non-pecuniary heads of damages will also have to be brought in *sync* with the dispensation in *Pranay Sethi* (supra). Thus, an amount of Rs.70,000/- being added, the total compensation in the case comes to [Rs.17,20,400/- + Rs.70,000/-] Rs.17,90,400/-, rounded off to Rs.17,91,000/- (Rupees Seventeen lakh and ninety one thousand only).

9. In above view, the award instead of being reduced, needs to be enhanced. Ordered accordingly. It shall carry interest as levied by the tribunal.

10. By order dated 19.12.2011, the insurance company had been directed to deposit the entire awarded amount with up-to-date interest with the Registrar General and, by subsequent order dated 25.05.2012, Rs.1,00,000/- was permitted to be released to the second respondent. The balance lying in deposit shall also now be released to the claimant. The insurance company will be obliged to pay the remainder of its liability under the modified award which it must do by requisite deposit with the tribunal within 30 days.

11. The statutory deposit is forfeited as costs to be made over to Delhi High Court Legal Services Committee.

12. The appeal and the pending application are disposed of in above terms.

R.K.GAUBA, J.

NOVEMBER 08, 2017
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