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

Decided on: 27th July, 2017

\+ MAC APPEAL No. 396/2017

THE NEW INDIA ASSURANCE CO. LTD. ..... Appellant
Through: Mr. J.P. N. Shahi, Adv.

versus

SMT. AMNA KHATOON & ORS. ..... Respondents
Through: Mr. Shekhar Aggarwal & Mr. Suresh Kumar, Adv. for R-1.

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

JUDGMENT (ORAL)

1. Azmat @ Arsad died in motor vehicular accident that occurred on 20.03.2014 statedly due to negligent driving of motor vehicle no. RJ 32 GA 4072, which was admittedly insured against third party risk with the appellant insurance company (insurer). His widow and other members of the family dependent upon him instituted accident claim case (MACP 208/2014) impleading the driver, owner and insurer of the vehicle as respondents. The tribunal, after inquiry, by judgment dated 23.02.2017, upheld the case of claim for compensation on the principle of fault liability and awarded compensation in the sum of Rs. 13,41,610/- with interest @ 10% per annum directing the insurance company to pay.

2. The insurer has come in appeal pressing it on two contentions. The first submission is that there was contributory negligence by driver of another vehicle it being Tata 407 bearing registration no. HR 55K 4728 in which the deceased was travelling as a helper. This contention must be rejected for the simple reason it was not raised as a defence before the tribunal, nor any effort made to bring in the driver or owner or insurer of the other vehicle as party respondents. Further, even if the plea were to be accepted, it would only mean a case of composite negligence. The claim of the third parties cannot be affected on such plea.

3. The second contention of the insurer is that the rate of interest levied at 10% is excessive. This must be accepted. Following the consistent view of this Court wherein interest at 9% per annum has been awarded (see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.].

4. The claimants have also filed cross-objections (CM No. 26434/2017). The learned counsel representing the claimants pressing the cross-objections pointed out that the award under the non-pecuniary heads of damages is not in *sync* with the awards which are made in the context of accidents of 2014 vintage.

5. Indeed, there is deficiency in the award of non-pecuniary damages in the sum of Rs. 1 lakh each towards loss of consortium and loss of love and affection and Rs. 25,000/- towards loss of estate and funeral expenses. Following the view taken in MAC.APP.No.160/2015 *Shriram General Insurance Co Ltd v. Usha,* decided by this court on 05.05.2016, non-pecuniary damages in the

sum of Rs. 1,50,000/- each towards loss of love & affection and towards loss of consortium and Rs.50,000/- each towards loss of estate and funeral expenses are added.

6. Thus, there would be net increase of Rs. 1,50,000/-. Ordered accordingly. Needless to add the entire award including the enhanced portion with interest @ 9% per annum from the date of filing of the petition till realization shall entirely fall to the share of the first claimant Amna Khatoon (wife).

7. The entire awarded amount has already been deposited with corresponding interest with the tribunal which shall now be released to the claimants in terms of the impugned judgment.

8. The insurance company shall deposit the balance, if any, in terms of the modification ordered above with the tribunal within 30 days of today, making it available to be released.

R.K.GAUBA, J.

JULY 27, 2017
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