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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 8th November, 2017

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MAC.APP. 14/2012 & CM No. 40262/2017(for substitution of
LRs)

ORIENTAL INSURANCE CO LTD Appellant

Through: Mr. A.K. Soni, Adv.

versus

SMT GUDIYA DEVI & ORS Respondents

Through: Mr. Manish Maini, Adv. for R1
to R6.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Ashish Kumar Jha, aged 37 years, working as a salesman with M/s Nulex Automation Technology Pvt. Ltd., sustained injuries that proved fatal in a motor vehicular accident that occurred on 11.03.2005 due to negligent driving of a motor vehicle described as a truck bearing registration no. HR-64-0266, it admittedly insured against third party risk with the appellant (insurer) for the period in question. The accident claim case (suit no. 872/2009) was instituted on 13.05.2005 by his wife and other members of the family dependant on him including his parents. The tribunal had held inquiry and, by judgment dated 25.11.2011, granted compensation in the total sum of Rs. 19,85,000/- fastening the liability on the insurer to pay with

rate of interest at 7.5% per annum, the amount being inclusive of Rs. 18,90,000/- towards loss of dependency. The insurer is in appeal questioning calculation of the loss of dependency.

2. During the pendency of appeal, the fifth and sixth respondents (claimants) passed away, they being parents of the deceased Ashish Kumar Jha. An application was moved under Order XXII Rule 4 of the Code of Civil Procedure, 1908 (CPC) by the appellant, seeking to substitute the said deceased claimants with their three other legal heirs in addition to those already on board, they being Manoj Kumar Jha, Amol Kumar Jha and Rekha Devi. The learned counsel for the claimants concedes to this application, submitting that the said three persons are the other children of the deceased respondents. He submitted that he also represents the said newly added respondents. The prayer in the application is, thus, allowed and amended memo of parties with substitution of the legal heirs is allowed to be taken on record.
3. The claimants had submitted before the tribunal that the deceased was earning, besides salary of Rs. 4,500/- per month, commission in the amount of Rs. 5,500/- per month from the employment. The claimants concede that no proof of such earnings from commission were mustered or brought before the tribunal. The claimants are not able to prove any such additional income even at this stage. The claimants had proved income tax returns (ITRs) for two consecutive assessment years

(AY) including AY 2003-04 (Ex-PW1/4) and AY 2004-05 (Ex-PW1/6), the income declared wherein is Rs.65,500/- and Rs.66,000/- per annum respectively. In these circumstances, the loss of dependency must be worked out on the basis of income declared in the said ITRs.

4. The evidence clearly shows that the deceased was a permanent and regular employee of the private company. Thus, following the ruling of the Constitution Bench of Supreme Court decided on 30.10.2017 in SLP(C) No. 25590/2015 *National Insurance Company Limited Vs. Pranay Sethi & Ors.*, the element of future prospects of increase in income to the extent of 50% (fifty per cent) are added and the loss of dependency is re-computed as $(66000 \times 150 / 100 \times 3/4 \times 15)$ Rs. 11,13,750/- rounded off to Rs. 11,14,000/-. Since the loss of dependency was calculated by the tribunal in the sum of Rs. 18,90,000/-, the total compensation would need to be reduced by $(1890000 - 1114000)$ Rs. 7,76,000/-. The award is thus, reduced to $(1985000 - 776000)$ Rs. 12,09,000/- (Rupees Twelve Lacs and Nine Thousand Only).
5. 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.*]
6. The award is modified accordingly.

7. By order dated 05.01.2012, the insurance company had been directed to deposit seventy five (75%) of the awarded amount along with proportionate interest with Registrar General within the specified period. By subsequent order dated 06.08.2012, 60% of the awarded amount was released to the claimants. Since fifth and sixth respondents have died, the legal representatives now added through the application under Order XXII Rule 4 of CPC being the siblings of the deceased, it is deemed proper that the entire balance share of the fifth and sixth respondents should go to the first claimant Gudiya Devi (widow). Ordered accordingly.
8. The insurance company will deposit balance of its liability in terms of the modification ordered above, if there is any deficiency with the tribunal within 30 days, making it available to be released to the claimants. Conversely, if excess has been paid, the claimants will be liable to reimburse the same. The registry shall calculate the amount payable to the claimants.
9. The appeal is thus, disposed of in above terms.

NOVEMBER 8, 2017

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R.K.GAUBA, J.