$~R-681 & 682

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

Decided on: 11th December, 2017

\+ MAC APPEAL 1251/2012

PREMA AND ANR. ..... Appellants
Through: Mr. O.P. Mannie, Advocate

versus

YOGENDER SINGH @ RAHUL & ORS. ..... Respondents
Through: Mr. A.K. Soni, Advocate for Mr.Sameer Nandwani, Adv. for R3/Sriram General Insurance Co. Ltd.

\+ MAC APPEAL 340/2013

SHRIRAM GENERAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. A.K. Soni, Advocate for Mr.Sameer Nandwani, Adv.

versus

PREMA SINGH & ORS. ..... Respondents
Through: Mr. O.P. Mannie, Adv. for Respondents No.1 & 2

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

JUDGMENT (ORAL)

1. On 16th May, 2011, Anjali, a bachelor aged 24 years old, daughter of claimants (Appellants in MAC APP. No.1251/2012 and Respondents No.1 and 2 in MAC APP. No.340/2013), died as a result of injuries suffered, in a motor vehicular accident due to negligent

driving of mini bus bearing registration No. DL1V-A-6685, admittedly insured against third party risk with Shriram General Insurance Company Limited (Insurer) for the period in question. By judgment dated 17th July, 2012, the Tribunal decided the Accident Claim Case (Suit No.73/2011) of the said claimants, directing payment of compensation in the sum of Rs.7,99,400/- by the Insurer with interest @ 7.5% per annum, calculating it thus:

Loss of dependency	Rs.7,64,400.00
On account of love and affection	Rs.25,000.00
Funeral expenses	Rs.10,000.00
Total	**Rs.7,99,400.00**

2. The claimants by their appeal (MAC APP. No.1251/2012) have submitted grievance that the compensation is inadequate, pointing out mainly that the Tribunal had accepted the offer of appointment at wages which were below the minimum wages payable during the relevant period as the notional income ignoring the minimum wages which should have been the appropriate benchmark. The claimants also submit that the Tribunal fell into error by factoring in the element of future prospects of increase in income to the extent of only 30% and applying the multiplier of 14 as per the age of the claimants, the non-pecuniary damages and the rate of interest levied also being inadequate.

3. On the other hand, the insurer by its appeal (MAC APP. No.340/2013) has primarily taken exception to the inclusion of future prospects of increase in income.

4. Given the nature of evidence, it is clear that the claimants were unable to strictly prove the gainful employment of the deceased. In these circumstances, the Tribunal had no option but to go by minimum wages. Since the victim was pursuing the course of study leading to a graduation degree, minimum wages of a matriculate (i.e. Rs.7,826/- per month) should have been adopted as the benchmark. It was inappropriate to assess the income notionally on the basis of the appointment offered by a private entity.

5. Following the ruling of a Constitutional Bench of the Supreme Court rendered on 31.10.2017 in *SLP (C) 25590/2014, National Insurance Company Ltd. Vs. Pranay Sethi and Ors.*, future prospects to the extent of 40% have to be added and in view of the decision in *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121,* which has been affirmed in *Pranay Sethi* (supra), the multiplier of 18 would apply, in view of the age of the deceased.

6. Thus, the loss of dependency is re-calculated as [7826 x 140/100 x 1/2 x 12 x 18] Rs.11,83,291.20/- rounded off to Rs.11,84,000/-.

7. The non-pecuniary damages also have to be brought in *sync* with the dispensation in *Pranay Sethi* (supra). Thus, in lieu of the amount included by the tribunal, Rs.15,000/- each towards loss of estate and funeral expenses are added, raising the compensation to [Rs.11,84,000/- + Rs.15,000/- + Rs.15,000/-] Rs.12,14,000/- (Rupees Twelve Lakh Fourteen Thousand only).

8. 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*.]

9. The apportionment of the award, as directed by the Tribunal, shall be followed.

10. The award is modified accordingly.

11. By order dated 16th April, 2013 in MAC APP. No.340/2013, the insurance company was directed to deposit the entire awarded amount with up-to-date interest accrued thereon with the Registrar General of this Court. Out of the said deposit, 60% of the award was permitted to be released to the claimants. Since the award has been increased, the amount lying in deposit shall be released to the claimants in terms of the impugned judgment with accrued interest.

12. The insurance company shall be obliged to deposit the balance of its liability, with the tribunal within 30 days, in terms of the modified award, making it available to be released to the claimants.

13. The statutory amount deposited by the insurer will be refunded only after proof is shown of the award having been satisfied.

14. Both the appeals are disposed of in above terms.

R.K.GAUBA, J.

DECEMBER 11, 2017
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