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

Decided on: 1st December, 2017

+ **MAC APPEAL 386/2017 and CM 15479/2017 and 43881/2017**

NATIONAL INSURANCE COMPANY LTD. Appellant
Through: **Ms. Hetu Arora Sethi, Advocate**

versus

DIL AAFEROON BEGUM & ORS. Respondents
Through: **Ms. Mohini, Advocate for R-9**
& 10

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

JUDGMENT (ORAL)

1. Mohd. Zuvair, a bachelor, aged 22 years, suffered injuries in a motor vehicular accident that occurred on 07.08.2014 due to negligent driving of a motor vehicle described as truck bearing registration no.DL-1M-6011 and died in the consequence. On the accident claim case (MACP 187/2014), instituted by the first to eight respondents, they including the parents and siblings of the deceased, the Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 15.02.2014, awarded compensation in the total sum of Rs.22,69,000/-. The liability to pay the said amount with interest at the rate of 9% p.a. has been fastened on the appellant (insurer), it admittedly having issued an insurance policy covering third party risk in respect of the truck for the period in question.

2. By the appeal at hand, the insurer questions the calculation of compensation submitting that the tribunal fell into error in computing the loss of dependency by adopting the minimum wages prevalent in Union Territory of Delhi ignoring the fact that the deceased was resident of Uttar Pradesh; that the element of future prospects to the extent of 50% were wrongly added; that the multiplier should have been adopted according to the age of the claimant parents and not as per the age of the deceased; and that the non-pecuniary damages in the amounts of Rs.2,00,000/- towards loss of love and affection, Rs.1,00,000/- for loss to estate and Rs.25,000/- for funeral expenses are excessive.

3. The contention about the minimum wages of Delhi being inappropriate is to be rejected for the simple reason the claimants had shown to the tribunal that the deceased was working for gain in a private company M/s. Rinku Transport in Delhi. It may be that they were unable to bring home any clear and cogent evidence about the level of earnings but that does not detract from the fact that he was working for gain in Delhi. Following the dispensation 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.*, the contention about the future prospects must be accepted and the same be restricted to 40%. However, following the declaration of law in *Pranay Sethi* (supra), endorsing the previous ruling of the Supreme Court in *Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the exception taken to the multiplier is incorrect. Similarly, non-pecuniary damages have to be

brought in *sync* with the ruling in *Pranay Sethi* (supra). It is noted that the deceased was a student of the course leading to the degree of Bachelor of Arts. In this view, the minimum wages payable to a matriculate (Rs.10,374/-) would deserve to be adopted. The submission of the claimants that deduction on account of personal and living expenses be made as per the number of claimants cannot be accepted. The siblings are dependents of the father, the claim being on account of death of a bachelor, 50% deduction on this account is in accord with the ruling in *Sarla Verma* (supra).

4. The loss of dependency is recalculated as $[Rs.10,374/- \times 140/100 / 2 \times 12 \times 18]$ Rs.15,68,548.8, rounded off to Rs.15,69,000/- (Rupees Fifteen lakh and sixty nine thousand only).

5. In view of the dispensation in *Pranay Sethi* (supra), Rs.15,000/- each is added towards loss to estate and funeral expenses. Thus, the total compensation is computed as $[Rs.15,69,000/- + Rs.15,000/- + Rs.15,000/-]$ Rs.15,99,000/- (Rupees Fifteen lakh and ninety nine thousand only). The award is modified accordingly. It shall carry interest as levied by the tribunal.

6. The apportionment of the award as directed by the tribunal will prevail.

7. By order dated 25.04.2017, the insurance company had been directed to deposit the entire awarded amount with interest accrued thereon which deposit was directed to be put in fixed deposit receipt. The Registry shall calculate the amount payable to the claimants in terms of the modified award and refund the excess in deposit with statutory deposit to the insurance company.

8. The appeal and the pending applications stand disposed of in above terms.

R.K.GAUBA, J.

DECEMBER 01, 2017

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