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

Decided on: 7th November, 2017

+ MAC.APP. 1087/2016

BHARTI AXA GEN.INS.CO.LTD. Appellants

Through: Mr. S.N. Parashar & Mr. Pankaj
Kumari, Advs.

versus

ANURADHA & ORS Respondents

Through: None.

+ MAC.APP. 537/2017

ANURADHA & ORS Appellants

Through: None.

versus

BHARTI AXA GEN INS. CO. LTD & ANR Respondents

Through: Mr. S.N. Parashar & Mr. Pankaj
Kumari, Advs.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Narendra Kumar, aged 42 years, earning his livelihood from private business, suffered injuries in motor vehicular accident that took place on 11.04.2014 on account of rash driving of motor cycle bearing registration no. DL-9S-AH-7049 and died in the consequence. His wife and other members of the family dependent on him, they being appellants in MAC APP. 537/2017 (collectively,

the claimants) instituted on 05.06.2014 accident claim case MACP No. 206/DAR/2014 in the wake of Detailed Accident Report (DAR) submitted by the police pursuant to investigation into the corresponding criminal case. In the said proceedings, the seventh respondent was impleaded as a party on the averments that he was the driver cum owner of the motor cycle. In addition, Bharti Axa General Insurance Company Limited (insurer), appellant in MAC APP 1087/2016, was also impleaded as a party, it concededly having issued an insurance policy, covering third party risk in respect of the motor cycle for the period in question.

2. The tribunal held inquiry and, by judgment dated 04.08.2016, returned findings, accepting the claim case that the accident had been caused resulting in death due to the negligent driving of motor cycle by the seventh respondent (driver cum owner of the offending vehicle). The tribunal computed compensation on the total sum of Rs.32,68,858/-, calculating it thus:-

S.No	Head	Amount
1.	Loss of dependency	Rs. 26,43,858/-
2.	Loss of love and affection to children (1,00,000 x 3)	Rs.3,00,000/-
3.	Loss of consortium	Rs.1,00,000/-

4.	For funeral expenses	Rs. 25,000/-
5.	Loss of estate	Rs. 1,00,000/-
6.	Loss of love and affection towards parent (50,000 x 2)	Rs. 1,00,000/-
7.	TOTAL	Rs. 32,68,858

8. The liability to pay the compensation with interest levied at 10% per annum was fastened against the insurer.
9. While the insurer by its appeal 1087/2016 questions the award on the ground that non-pecuniary heads of damages granted by the tribunal and the rate of interest levied are excessive, it also raises the issue that the document purporting to be the insurance policy cover had been obtained by the seventh respondent by playing fraud on the appellant insurance company, such document being antedated and based on suppression of material facts from the insurance company. The appellant submits that these facts have come to light later, this giving rise to further cause of action for the case to be remitted to the tribunal for inquiry into the issue of the insurance policy and liability of insurer to indemnify.
10. *Per contra* the claimants have submitted that the tribunal fell into error by failing to take into account the factor of future prospects of increase in the income, for which sufficient proof had been

established by submitting income tax returns (ITRs) filed by the deceased for the assessment years (AYs) 2011-12, 2012-13, 2013-14 (collectively, Ex-PW1/1) which clearly show progressive rise in income.

11. The learned counsel on both sides have been heard and the record has been perused. The contention of the claimants with regard to the calculation of loss of dependency is found to be correct. The ITRs for the three assessment years do show progressive rise in income, they being from Rs.2,10,123/- for AY 2011-12 to Rs.2,31,503 for AY 2012-13 and finally to Rs.2,51,800/- for AY 2013-14. Since the deceased falls in the category of self employed persons, following the ruling of the Constitution Bench of the Supreme Court decided on 31.10.2017 in *National Insurance Company Limited Vs. Pranay Sethi & Ors.*, the element of future prospects of increase to the extent of 25% must be added to calculate the loss of dependency.

12. It is noted that the tribunal had applied the multiplier of 14 and made deduction on account of personal and living expenses to the extent of one-fourth. It is noted that in the last said assessment year, the deceased had declared his tax liability as Rs.1,545/- which will have to be deducted.

13. Thus, the loss of dependency is re-calculated as $(2,51,800 - 1545 \times \frac{125}{100} \times \frac{3}{4} \times 14)$ Rs.32,84,596.88/- rounded off to Rs. 32,85,000/-.

14. Given the ruling in *Pranay Sethi* (supra), the non-pecuniary damages only to the extent of Rs.40,000/- towards loss of consortium and Rs. 15,000/- each on account of loss of estate and funeral expenses may be added. Thus, the total compensation in the case comes to (3285000 + 40000+15000+15000) Rs. 33,55,000/- (Rupees Thirty three lakh and fifty five thousand only). The award is increased accordingly.
15. The tribunal has not given any special reasons for levy of interest at 10% (ten percent) per annum which is higher than the ordinary. 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.*]
16. It is noted that the tribunal had apportioned the award by specifying the amounts falling to the share of each claimant. While the said amounts awarded by the tribunal shall be released according to the apportionment as directed by the tribunal, it is directed that the entire enhanced portion of the award with corresponding interest shall fall to the share of the first claimant Anuradha (widow).
17. On the issue of the insurance policy and fraud, the learned counsel for the seventh respondent (driver cum owner of the offending vehicle) fairly conceded that the matter may be remitted for a limited inquiry to the tribunal. She also submitted that the burden

of proof as to denial of its obligation must be discharged by the insurer. Her contention to this effect is accepted.

18. Hence the issue is remitted to the tribunal for inquiry in which the insurer will be called upon to lead evidence first. Thereafter, the seventh respondent shall be given the opportunity to lead evidence in rebuttal. The tribunal is expected to hold expeditious inquiry into the matter and reach a fresh adjudication at an early date. It shall issue requisite directions on the basis of the conclusions reached thereafter by granting or declining recovery rights, as the case may be. For such purposes, the insurer (appellant) and driver cum owner (seventh respondent) shall appear before the tribunal on 7th December, 2017.

19. The insurer had deposited the awarded amount with the tribunal in terms of order dated 21.12.2016 in MACA APP. 1087/2016. By order dated 10.07.2017, 50% of the said deposited amount was released to the claimants, the balance kept in fixed deposit receipt. The balance shall now also be released to the claimants in terms of the judgment of the tribunal, as modified above. Since the compensation has been increased, the insurer is obliged to deposit the remainder of its liability towards the claimants within 30 days and the same may be released to the claimants.

20. The statutory amount deposited by the insurer shall be refunded.

21. Both appeals stand disposed of in above terms.

22.Dasti.

R.K.GAUBA, J.

NOVEMBER 7, 2017
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