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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 16th November, 2017

\+ MAC.APP. 819/2017 & CM No.33259/2017(stay) & CM No.33260/2017(delay)

THE ORIENTAL INSURANCE CO LTD ..... Appellant

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

versus

RAJNI ANAND & ORS ..... Respondents

Through: Mr. S.N. Parashar, Adv. for R1toR5.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Manish Anand, aged 45 years, earning his livelihood from private business, died as a result of the injuries suffered in motor vehicular accident that took place on 07.06.2016 involving negligent driving of motor cycle bearing registration no. DL-10SQ-1911 admittedly insured against third party risk for the period in question with the appellant (insurer). The accident claim case (MACT no.1799/2016) instituted on 08.07.2016 by his wife and four other members of the family dependant on him, they being first to fifth respondents (collectively, the claimants). The tribunal by judgment dated 19.04.2017 awarded compensation in the total sum of Rs.62,44,616/- fastening the liability on the insurer to pay with interest at 10% (ten percent) per annum. It is noted that the tribunal has specified the amounts payable to the different claimants.

2. The award has been modified on the apportionment as to be made afresh. It is directed that sixty percent (60%) of the awarded compensation with corresponding interest shall fall to the share of first claimant Rajni Anand (widow). The balance equally be distributed amongst the remaining claimants, the said amount being inclusive of Rs. 57,19,616/- towards the loss of dependency, Rs. 25,000/- towards loss of funeral expenses, Rs. 1,00,000/- each for loss of consortium, loss of estate and loss of love and affection towards parents besides Rs.2,00,000/- for loss of love and affection to children.

3. The appeal at hand is pressed by the insurer arguing that while calculating the loss of dependency based on the Income Tax Return (ITR) for Assessment Year (AY) 2015-16, tax liability was not deducted and element of future prospects of increase to the extent of thirty percent (30%) were wrongly added. The insurer is also in appeal questioning the non pecuniary heads of damages granted and the rate of interest levied, submitting that the same are excessive.

4. The claimants had proved the ITR of the deceased for AY 2015-16 (Ex-PW1/1) reflecting the gross total income of Rs. 4,19,019/-. The ITR does indicate that the income tax liability was Rs.2,093/- only.

The said amount, as rightly pleaded by the insurer, must be deducted from the income while calculating loss of dependency**.**

5. Following the ruling of the 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 element of future prospects in the present case has to be restricted to twenty five percent (25%) only.

6. Thus, the loss of dependency is recomputed as (419019-2093x125/100x3/4x14) Rs. 54,72,153.75 rounded off to Rs. 54,73,000/- (Rupees Fifty Four Lacs Seventy Three Thousand Only).

7. The non-pecuniary awards also have to be brought down to be in accord with the dispensation in *Pranay Sethi* (supra). Thus, Rs. 40,000/- towards loss of consortium and Rs.15,000/- each for loss of estate and funeral expenses are added. The total compensation in the course is calculated as Rs.(54,73,000/-+40,000/-+15,000/-+15,000/-) Rs.55,43,000/- (Rupees Fifty Five Lacs Forty Three Thousand Only). The award is modified accordingly.

8. The tribunal has not given any special reasons for levy of interest at ten percent (10%) per annum which is more than the rate ordinarily applied. Following the consistent view taken by this Court, the rate of interest is increased to 9% 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. By order dated 12.09.2017, the execution of the impugned award was stayed. The insurance company is directed to satisfy the modified award by requisite deposit with the tribunal within 30 days.

10. The statutory amount shall be refunded.

R.K.GAUBA, J.

NOVEMBER 16, 2017
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