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

Decided on: 2nd November, 2017

\+ MAC.APP. 1006/2015 & CM No. 31940/2015

NATIONAL INSURANCE CO LTD ..... Appellant

Through: Ms. Rakhi Dubey, Adv.

versus

RAMA DEVI & ORS ..... Respondents

Through: None.

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

JUDGMENT (ORAL)

1. On the accident claim case (suit no. 79/2015) instituted by first to fourth respondents (collectively, the claimants), the tribunal, by judgment dated 04.11.2015, awarded compensation in the total sum of Rs. 22,16,044/- on account of death of Raju in a motor vehicular accident which occurred on 13.12.2014 due to the negligent driving of a motor vehicle which was insured with the appellant (insurer) for the period in question against third party risk. The tribunal directed the tribunal to pay the said amount with interest at 9% per annum, it including loss of dependency at Rs. 19,81,044/-, the income of the deceased having been assessed primarily as Rs.8632/- on the basis of

minimum wages on which the element of future prospects to the extent of 50%, was added.

2. Placing reliance on the judgment 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 appellant submits that the element of future prospects in the present case could not have been more than 40% since the deceased was self-employed. It is also submitted that the non-pecuniary damages awarded by the tribunal in the sum of Rs.10,000/- towards loss to estate, Rs.1,00,000/- towards loss of consortium and Rs.25,000/- towards funeral expenses need to be revised to Rs.15,000/-, Rs.40,000/- and Rs.15,000/- respectively in terms of the judgment in *Pranay Sethi* (supra).

3. Inspite of due service, there is no appearance on behalf of the claimants at the time of hearing.

4. Both the submissions of the insurer to above effect deserve to be accepted. The loss of dependency is re-calculated as (Rs.8,632/- x 140/100 x 3/4 x 12 x 17) Rs. 18,48,974/-. The tribunal had awarded Rs. 19,81,044 under this head. Thus, the compensation would stand reduced by (19,81,044-18,48,974) Rs. 1,32,070/- (Rupees One lakh thirty two thousand and seventy only).

5. Similarly, the modification in the above mentioned non-pecuniary heads of damages would result in reduction by Rs. (Rs.1,35,000/- (-) Rs.70,000/-) Rs. 65,000/- (Rupees Sixty five thousand only). Thus, the award needs to be reduced by

(Rs.1,32,070/- + Rs.65,000/-) Rs. 1,97,070/- (Rupees One lakh ninety seven thousand and seventy only).

6. The total award is, therefore, reduced to (Rs.22,16,044/- (-) Rs.1,97,070) Rs. 20,18,974/- rounded off to Rs. 20,19,000/- (Rupees Twenty lakh and nineteen thousand only). It shall carry interest as levied by the tribunal.

7. By order dated 21.12.2015, the insurance company had been directed to deposit awarded amount with the Registrar General. Fifty percent (50%) of the awarded amount was permitted to be released to the claimants. The Registry shall now release the balance payable to the claimant in terms of modified award refunding the excess in deposit to the insurance company.

8. The statutory amount shall be refunded to the insurance company.

9. The appeal and the pending application are disposed off in above terms.

R.K.GAUBA, J.

NOVEMBER 2, 2017
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