$~R-708

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

Decided on: 4th January, 2018

\+ MAC.APP. 9/2013

ORIENTAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. Pradeep Gaur, Advocate

versus

USHA & ORS. ..... Respondents

Through: Mr. S.N. Parashar, Advocate

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

JUDGMENT (ORAL)

1. An accident claim case (MACT No.723/07) was instituted on 02.08.2007, by the first to sixth respondents (collectively the claimants), seeking compensation on account of death of Rajbir Kaushik, in a motor vehicular accident that took place on 11.06.2007, due to negligent driving of motor vehicle described as Tata 407 bearing registration No.DL-1LB-0942, admittedly insured against third party risk for the period in question with the appellant (insurer).

2. The tribunal after inquiry, by judgment dated 09.11.2012, accepted the aforesaid case under Section 166 of the Motor Vehicles Act, 1988 and awarded compensation in the total sum of Rs.7,33,035/- The said amount inclusive of Rs.5,53,035/- towards loss of dependency, Rs.10,000/- each for funeral charges, loss of estate and

loss of consortium, Rs.1,00,000/- towards loss of love, company and affection and Rs.50,000/- for gratuitous services. The liability to pay the said amount, after deducting interim compensation (wrongly mentioned as Rs.40,000/-) was fastened on the insurer with levy of interest @ 9% per annum.

3. The insurer filed the present appeal submitting that the award of compensation is excessive.

4. At the hearing, the appeal is pressed to point out primarily that the tribunal fell into error by assuming the age of the deceased as 49 years. This submission, record shows, is correct. The claimants had submitted the original driving licence of the deceased which is at page 453-A of the tribunal's record indicating his date of birth as 04.08.1955. In this view, the deceased was more than 51 years old on the date of his death. Thus, the multiplier of '13' was inappropriate and the element of future prospects of increase in income to the extent of 30% over and above the income assumed by minimum wages (Rs.3636/-) excessive.

5. Having regard to the ruling 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 said element of future prospects will have to be restricted to 10% only, and having regard to the age of the deceased, the multiplier of 11 would apply. Thus, the loss of dependency is re-calculated as (3636/- x 110/100 x 3/4 x 12 x 11) Rs.3,95,960.40 rounded off to Rs.3,96,000/-.

6. The insurance company also submits that the non-pecuniary damages awarded are unduly high. Following the dispensation in *Pranay Sethi* (supra), the non-pecuniary heads of damages also need to be revised. In lieu thereof, Rs.40,000/- towards loss of consortium and Rs.15,000/- each towards loss of estate and funeral expenses are added. Thus, the total compensation comes to (3,96,000/- + 40,000/- + 15,000/- + 15,000/-) Rs.4,66,000/- (Rupees Four Lakhs Sixty Six Thousand Only).

7. Needless to add, the interim compensation if paid will be liable to be adjusted. The compensation, however, will carry interest @ 9% per annum as levied by the tribunal.

8. By order dated 04.01.2013, the insurance company was called upon to deposit the entire awarded amount with upto date interest with UCO Bank, Delhi High Court Branch, New Delhi and by subsequent order dated 15.03.2013, out of the said amount 50% was ordered to be released to the claimants in terms of the impugned award.

9. The registry shall re-calculate the award as per modification ordered above, releasing the balance, if any, in favour of the claimants along with interest, in terms of the impugned award, refunding the excess amount with interest to the appellant (insurer).

10. The statutory amount shall be refunded to the insurer.

11. The appeal stands disposed of in above terms.

R.K.GAUBA, J.

JANUARY 04, 2018/vk