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

Decided on: 18th April, 2018

+ **MAC.APP. 664/2013**

SAKL PASWAN & ANR.

..... Appellants

Through: Mr. O.P. Mannie and Ms.
Hreeshikha Bhargav, Advocates

Versus

JAI NANDAN BHAGAT & ORS.

..... Respondent

Through: Mr. Pankaj Gupta for Ms. Suman
Bagga, Adv. for R-3

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Mithlesh Kumar, aged 17 years (borne on 06.03.1992), working as a helper died as a result of injuries suffered in a motor vehicular accident that had occurred on 18.08.2009 due to negligent driving of vehicle bearing registration no.DL-1LE-1363 (a tractor). An accident claim case (MACT 183/12/10) was instituted on 12.05.2010 by the appellants, they being the father and mother, respectively of the deceased. The case was contested by the third respondent (insurer) and also by the second respondent (the owner of the tractor).

2. The Motor Accident Claims Tribunal (Tribunal), by judgment dated 31.01.2013, returned a finding holding the tractor driver (first respondent) responsible for the fatal accident. It awarded

compensation in the total sum of Rs.2,04,372/- with interest at the rate of 7.5% p.a., exonerating the insurer accepting its plea that the deceased was a gratuitous passenger.

3. The present appeal was filed seeking enhanced compensation on the ground the tribunal has fallen into error by applying the multiplier of 14 according to the age of the claimants and has not added the element of future prospects of increase. The claimants also submit the rate of interest granted is inadequate and further that the insurance company could not have been exonerated, the plea to above effect not even having been taken in the written statement. It is also their grievance that an amount of Rs.1,00,000/- gratuitously received from the owner of the vehicle has been wrongly deducted.

4. The contention about the impropriety of the multiplier and the error on account of the future prospects not being added must be accepted, 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.*

5. The tribunal had assumed the notional income with the help of minimum wages (Rs.3,953/-). The multiplier of 18 will have to be invoked in view of the age of the deceased and the element of future prospects deserves to be added to the extent of 40%. Thus, the loss of dependency is recalculated as $[Rs.3,953/- \times 140/100 / 2 \times 12 \times 18]$ Rs.5,97,693.60, rounded off to Rs.5,98,000/-.

6. The non-pecuniary damages as included in the award by the tribunal also need correction. Following the dispensation in *Pranay Sethi* (supra), Rs.15,000/- each towards loss to estate and funeral

expenses are added. Thus, the total compensation in the case is computed as [Rs.5,98,000/- + Rs.15,000/- + Rs.15,000/-] Rs.6,28,000/-.

7. The record shows that on 21.01.2013, the claimants through counsel had fairly admitted before the tribunal that the second respondent had paid Rs.1,00,000/- as compensation and that such amount will have to be deducted. In this view, the counsel for the appellants does not press for any correction on that account.

8. The amount of Rs.1,00,000/- being deducted, the net compensation payable to the claimants is calculated as [Rs.6,28,000/- (-) Rs.1,00,000/- = Rs.5,28,000/- (Rupees Five lakh and twenty eight thousand only)]. Ordered accordingly.

9. 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.*]

10. This court finds the conclusion about exoneration of the insurance company to be incorrect. No plea to the effect noted above was taken in the written statement. Such plea could not have been sprung as a surprise at the conclusion of the inquiry. There is no reason why the insurance company should be exonerated. The direction of the tribunal to that effect is set aside.

11. The counsel for the appellants (claimants) submits that only Rs.50,000/- as interim compensation was received from the insurance company (besides Rs.1,00,000/- from the registered owner of the vehicle). The insurance company is, thus, directed to pay the balance

after adjusting the amount also paid as interim compensation, by requisite deposit with the tribunal within 30 days hereof. The apportionment of the compensation as directed by the tribunal shall prevail.

12. The appeal is disposed of in above terms.

R.K.GAUBA, J.

APRIL 18, 2018

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