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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 22nd January, 2018

+ MAC.APP. 158/2017 & CM No. 6524/2017 (stay)

NATIONAL INSURANCE CO. LTD. Appellant

Through: Mr. Pradeep Gaur & Mr. Amit
Gaur, Advs.

versus

HARGYAN SINGH & ORS Respondents

Through: Mr. Vivek Sharma & Mr. K.C.
Dixit, Advs. for R-1 & 2.

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

JUDGMENT (ORAL)

1. Sunil, aged 19 years, died in motor vehicular accident that occurred on 20.11.2011, due to negligent driving of Indica Car bearing registration no. UP 16 AT 3669, admittedly insured against third party risk for the period in question with the appellant (insurer). On accident claim case (suit no. 43/2015), instituted on 17.05.2012, by his parents, i.e. first and second respondents (collectively, the claimants), in the wake of detailed accident report (DAR) submitted by the police on the basis of evidence gathered during investigation into corresponding first information report (FIR no. 575/2011), of police station Link Road, Ghaziabad, Uttar Pradesh, the tribunal held inquiry and, by judgment dated 26.12.2016, it awarded compensation in the

sum of Rs. 16,00,000/-, directing the insurer to pay with interest @ 8% per annum excluding for certain period, calculating it by including Rs. 13,50,000/- towards loss of dependency, Rs. 1,50,000/- towards loss of love & affection and Rs. 50,000/- each for funeral expenses and loss of estate.

2. The insurer by the appeal at hand questions the award on the ground that the loss of dependency is based on wrong assumption that the deceased was earning Rs. 10,000/- per month, there being no basis for such conclusion. It is submitted that future prospects have been wrongly added to the extent of 50%, reference in this regard being made 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.* With reference to the same decision exception is also taken to the non-pecuniary heads of damages being excessive.

3. Having heard the counsel on both sides and having perused the record, this Court finds substance in the above-noted contentions of the insurer. The income could not be assumed merely on oral word. It is pointed out that even the driving licence of the deceased was not proved to substantiate the fact that he was earning his livelihood as auto rickshaw driver.

4. In the given facts and circumstances, the income is taken as Rs. 6656/-, it being the minimum wages payable at the relevant point of time. Given the ruling in *Pranay Sethi* (supra), the future prospects have to be restricted to 40%. Multiplier has to be taken as per the age

of the deceased, and relevant multiplier would be 18. The deceased was a bachelor, the loss of dependency is re-calculated as $(6656 \times 140 \div 100 \times 1/2 \times 18)$ Rs. 10,06,387.20 rounded off to Rs. 10,07,000/-. The non-pecuniary damages also need to be in accord with the dispensation in *Pranay Sethi* (supra). Thus, in their lieu, Rs. 15,000/- each is added on account of funeral expenses and loss to estate. The total compensation is computed as $(10,07,000 + 15,000 + 15,000)$ Rs. 10,37,000/-.

5. The tribunal had specified the amounts payable to the claimants. Given the reduction in the award, it is directed that instead of the apportionment ordered by the tribunal, the award shall be distributed amongst first and second respondents (claimants) in the ratio of 25% and 75% respectively.

6. Following the consistent view taken by this Court, the rate of interest is increased to nine per cent (9%) per annum from the date of filing of DAR, excluding the period as per the directions in the impugned judgment. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*]

7. The award is modified accordingly.

8. By order dated 22.02.2017, the execution of the award was stayed subject to the amount awarded by the tribunal with interest being deposited with the tribunal. The tribunal shall now compute the amount payable to the claimants under the modified award and release the same refunding the excess in deposit to the insurance company.

9. The statutory amount shall be refunded.

10. The appeal and the pending application stand disposed of in above terms.

R.K.GAUBA, J.

JANUARY 22, 2018

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