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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 4th January, 2018

+ MAC.APP. 18/2013

LT. COL. SUBE SINGH THUKRANA & ANR. Appellants

Through: None.

versus

SAJAMUDDIN & ORS. Respondents

Through: Mr. Priyadarsi Acharya, Adv.
for R-3.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. Sumit Kumar Thukrana, a 19 year old bachelor, suffered injuries in motor vehicular accident that occurred on 07.11.2007, due to negligent driving of motor vehicle described as Tata Tempo bearing registration no. DL 1M 3025 and died in the consequence. The accident claim case (MACT 201/08/11), instituted on 29.01.2008, by his parents (the claimants), resulted in judgment dated 03.11.2011, with the findings that the accident had occurred leading to the death on account of negligence on the part of the first respondent in driving the said vehicle. The tribunal found that the vehicle in question was registered in the name of the second respondent and insured against third party risk for the period in question with the third respondent (insurer). It awarded compensation in the sum of Rs. 5,69,464/- and directed the third respondent (insurer) to pay with interest @ 7.5% per annum, calculating it thus:-

S.No.	Heads	Compensation
1.	Loss of dependency (2973/- x 12 x 14)	Rs. 4,99,464/-
2.	Loss of love and affection*	Rs. 50,000/-
3.	For funeral expenses	Rs. 10,000/-
4.	Loss of estate	Rs. 10,000/-
	Total	Rs. 5,69,464/-

2. It may be added here that the insurer had taken the plea that the first respondent (the driver) was not holding a valid or effective driving licence. It led evidence to this effect which was accepted and on that basis recovery rights were granted in favour of the insurer against the first and second respondents.

3. The claimants instituted the present appeal raising the grievance that the compensation awarded was inadequate. The appeal was put in the list of 'regulars' by order dated 30.08.2017. When it is called out for hearing, there is no appearance on behalf of the appellants or first or second respondents.

4. The learned counsel for the third respondent has been heard and with his assistance the record perused.

5. The claimants were unable to muster any clear proof of income of the deceased. They, however, proved that he was a matriculate. The tribunal assumed the income on the basis of minimum wages (Rs. 3964/-) payable to a matriculate during the relevant period. It added the element of future prospects of increase in income to the extent of 50% and made deduction of personal and living expenses to the extent of 50% and then invoked the multiplier of 14 in view of the age of the claimants. The appellants have raised the contention that the deceased was a student of a course leading to the degree of bachelor of dental surgery and, therefore, his income should have been calculated more than that of a matriculate. In the given facts and circumstances, however, in absence of any other clear proof of the probable earnings of the deceased, the approach of the tribunal on the issue cannot be faulted. It is at the same time correct on the part of the insurer to contend that given 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 element of future prospects will have to be restricted to 40%. But, the grievance of appellants about the multiplier is also correct. Following the ruling of the Supreme Court in *Sarla Verma (Smt.) & Ors. v. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121 and *Pranay Sethi* (supra), the multiplier of 18 should apply. Thus, the loss of dependency is recalculated as $(3964 \times 140 \div 100 \div 2 \times 12 \times 18)$ Rs. 5,99,356.80, rounded off to Rs. 6,00,000/-.

6. The contention of the insurer about impropriety of the non-pecuniary damages must also be accepted. Following the dispensation in *Pranay Sethi* (supra), in lieu of the awards under different heads of non-pecuniary damages granted by the Tribunal, Rs.15,000/- each for loss of estate and funeral expenses are added. The compensation in the case is calculated as (6,00,000 + 15,000 + 15,000) Rs.6,30,000/- (Rupees Six lakh and thirty thousand only). The award is modified accordingly.

7. Following the consistent view taken by this Court, the rate of interest is increased to 9% (nine percent) 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.*]

8. It is directed that the entire enhanced portion of the award including the amount payable on account of increased rate of interest shall fall to the share of second appellant (mother) only. The third respondent is directed to satisfy the enhanced award by requisite deposit with the tribunal within 30 days, making it available to be released. Needless to add, the recovery rights shall remain undisturbed.

9. The appeal is disposed of in above terms.

R.K.GAUBA, J.

JANUARY 04, 2017

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