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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on :- 5th April, 2018

+ MAC.APP. 685/2016 & CM No.10684/2018

THE ORIENTAL INSURANCE CO LTD Appellant

Through: Mr. Shoumik Mazumdar, Advocate.

versus

SUMAN & ORS

..... Respondents

Through: Mr. Pawan Kumar Bahal with
Mr. Shailendra Verma, Advocates for
R-1 & 3 along with R-1 and 3 in
person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On the accident claim case (MACT Old no. 276/10 – new no. 15291/15) instituted for and on behalf of the respondent nos. 1 to 4 (collectively, the claimants) on 13.09.2010, by judgment dated 27.05.2016, the Motor Accident Claims Tribunal returned finding to the effect that Vicky Chauhan, aged about 22 years had died in motor vehicular accident that had occurred on 22.06.2010 due to negligent driving by fifth respondent (driver) of motorcycle bearing registration DL-5-SAA-6639 registered in the name of sixth respondent (owner), and admittedly insured against third party risk for the period in question with the appellant (insurer).

2. The Tribunal awarded total compensation in the sum of Rs.21,26,000/-, it being inclusive of Rs. 17,01,000/- towards loss of dependency besides non-pecuniary damages in the sum of Rs.2,00,000/- towards loss of love and affection, Rs.1,00,000/- each towards loss of consortium and estate and Rs. 25,000/- towards funeral expenses. The compensation was ordered to be paid by the insurer with interest at 9% per annum, it having been apportioned in the ratio of 30:30:30:10 in favour of respondents nos. 1, 2, 2A and 3 respectively.

3. The insurer presses the appeal on the ground that non-pecuniary heads of damages are excessive. This plea must be accepted in view of the ruling 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.*

4. Thus, following the dispensation in *Pranay Sethi* (supra), in lieu of the non-pecuniary damages awarded by the Tribunal, Rs.40,000/- towards loss of consortium and Rs.15,000/- each towards loss of estate and funeral expenses are added to the loss of dependency, the total compensation payable being (17,01,000 + 40,000 + 15,000 + 15,000) Rs. 17,71,000/- (Rupees Seventeen Lakhs Seventy One Thousand Only). The award is modified accordingly. Needless to add, it shall carry interest as levied by the Tribunal. The apportionment of the compensation shall remain undisturbed.

5. By order dated 30.08.2016, the insurance company had been directed to deposit entire awarded amount with up-to-date interest at 9% per annum with UCO Bank Delhi High Court Branch. By order dated 07.10.2016, part of the amount deposited was ordered to be put in fixed deposit receipts, balance to be released to first and third respondents in equal shares by transferring the said amount in their bank accounts. The withdrawal of monthly interest from the FDRs was permitted to the first and third respondents through their saving bank accounts, the monthly interest accruing on the fixed deposit receipts in the names of minors (respondents Nos.2 and 2A) permitted to be credited to the saving bank account of first respondent. It was further directed that at the time of maturity, fixed deposit amount shall be automatically credited in the individual saving bank accounts of the beneficiaries.

6. In the above facts and circumstances, the Registry will re-calculate the amounts payable to the respective claimants in terms of the directions in the judgment dated 27.05.2016 of the Tribunal to be read with order dated 07.10.2016 of this Court. The Registry, after undertaking the said exercise, shall ensure that the fixed deposit receipts and the amounts releasable on maturity are handed over to the respective claimants. The amount deposited in excess shall be refunded to the insurance company.

7. In view of the above, it would be proper that no decision is taken on the application (CM No. 10684/2018) of first and third respondents for premature release of the amount put in fixed deposit

receipts. The application is disposed of with the observations that the claimants would have the liberty to approach the Tribunal for appropriate relief for that purpose.

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

9. The appeal stands disposed of in above terms.

R.K.GAUBA, J.

APRIL 05, 2018

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