$~R-711

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

***Decided on: 4th January, 2018***

\+ MAC APPEAL 19/2013

NATIONAL INSURANCE COMPANY LTD. ..... Appellant
Through: Mr. Arihant Jain for Ms. Shantha Devi Raman, Advocate.

Versus

INDRA CHAUHAN & ORS ..... Respondents
Through: Mr. A.K. Soni, Advocate for R-8.

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

**JUDGMENT (ORAL)**

1. Mukand Lal Chauhan, aged 36 years, working as Post Graduate Teacher (PGT) with Kendriya Vidayalaya Sangathan, was travelling on 04.06.2007 in bus bearing registration No.UA-07J-0761 (the bus) of Uttrakhand Parivahan Nigam (the seventh respondent) it admittedly having been insured against third party risk for the period in question with Oriental Insurance Company Limited (the eighth respondent). At about 0130 hours, the said bus came to be involved in a collision with Trailer Truck bearing registration No. HR-32T-3255 (the truck) driven by the fourth respondent (the driver of the truck), it admittedly being registered in the name of fifth respondent (owner of the truck) and registered against third party risk with National Insurance Company

Limited (the appellant). As a result of the collision and the injuries suffered consequently, Mukand Lal Chauhan died. An accident claim case (MACT No.994/07) was instituted by his wife and two daughters, they being first to third respondents (collectively, the claimants) on 07.11.2007 seeking compensation, impleading the driver, owner and the insurer respectively, both of the truck and the bus.

2. The Tribunal held inquiry and, by judgment dated 11.09.2012, returned a finding that the accident had occurred due to negligent driving of the truck holding its driver and owner liable to pay compensation. The Tribunal awarded total sum of Rs. 40,13,680/- and calculated it thus:-

| | | |
|---|---|---|
| 1. | Loss of dependency | Rs. 36,13,680/- |
| 2. | Funeral Charges | Rs. 25,000/- |
| 3. | Loss of Estate | Rs. 75,000/- |
| 4. | Loss of consortium | Rs. 50,000/- |
| 5. | Loss of love, company and affection etc. | Rs. 1,50,000/- |
| 6. | Notional loss of gratuitous service | Rs. 1,00,000/- |
| | Total | Rs. 40,13,680/- |

3. The liability to pay the compensation with interest at 9% per annum was fastened on the insurer of the truck which has come up in appeal to assail the said judgment.

4. The appeal was put in the list of '*Regulars*' as per order dated 10.02.2016. When it is called out in its turn, there is no appearance on

behalf of the claimants or other respondents except the insurer of the bus.

5. The learned counsel for the insurers of both the vehicles have been heard and the record perused.

6. The first contention urged by the insurer of the truck is that the evidence led also showed contributory negligence on the part of the bus driver. Reference is made in this regard to the testimony of Dayal Singh (PW-2) who was also a passenger in the bus at the time of the accident. No doubt, PW-2 in the course of his deposition spoke about the bus driver having used recklessly fast speed, but then it is clear from the other evidence on record that this was not the reason for the collision to take place. The two vehicles had approached the place of accident from opposite directions. The insurer of the truck had filed copy of the site plan Annexure-A2 which itself showed that it is the truck which had come in the wrong lane meant for the movement of the bus from South to North. In these circumstances, the head-on collision between the two vehicles took place because the truck had suddenly come in the path of the bus. Negligence on the part of the truck driver is writ large on the record and the finding to the effect returned by the Tribunal does not call for any interference by this Court.

7. The Tribunal found that the deceased was earning Rs.20,076/- as salary from his employment with Kendriya Vidyalaya Sangathan. It added the element of future prospects of increase to the extent of 50% and applied the multiplier of 15, after making deduction of 1/3rd towards personal and living expenses. The contention of the insurer of

the truck is that in computing the loss of dependency, the income tax liability should have been deducted.

8. Having regard to the level of earnings and the rates of Income Tax prevalent at that point of time along with the standard deduction to which the deceased, a salaried employee, would have been entitled, this Court finds no case made out for any such deduction. In these circumstances, the calculation of loss of dependency by the Tribunal is found free from any error.

9. The non-pecuniary heads of damages, however, need to be re-visited in view of 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.* Thus, in lieu of the awards under different heads of non-pecuniary damages granted by the Tribunal, Rs.40,000/- towards loss of consortium and Rs.15,000/- each for loss to estate and funeral expenses are added. The compensation is thus, reduced to Rs.(36,13,680 + 40,000 + 15,000 + 15,000) Rs.36,83,680/- rounded off to Rs.36,84,000/- (Rupees Thirty Six Lakhs Eighty Four Thousand Only). Needless to add, the award shall carry interest as levied by the Tribunal.

10. By order dated 08.01.2013, the appellant had been directed to deposit the entire awarded amount with up-to-date interest with UCO Bank, Delhi High Court Branch. Out of such deposit, 80% was directed to be released to the claimants. The Registry shall calculate the balance amount payable to the claimants under the modified award and release the same refunding the excess in deposit to the appellant.

11. The statutory amount be refunded to the insurance company.

12. The appeal is disposed of in above terms.

**R.K.GAUBA, J.**

**JANUARY 4, 2018**
*srb*