$~34

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

% *Decided on: 04.03.2020*

\+ MAC.APP. 337/2017 & C.M. No.12954/2017

NATIONAL INSURANCE CO LTD ..... Appellant

Through: Ms. Aishna Jain for Ms. Shanti Devi Raman, Advocate.

versus

SHAHEEN & ORS ..... Respondents

Through: Mr. J.S. Kanwar, Advocate for R-1.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>NAJMI WAZIRI, J. (Oral)</u>

1. This appeal impugns the Award passed by the learned MACT on 31.01.2017 in suit No.357659/2016 on the ground that penal interest at the rate of 12% has been awarded and the driver of the offending vehicle being minor at the time of the motor vehicular accident, the insurer cannot be held liable to indemnify a claim which is in breach of the policy condition.

2. Insofar as the penal interest is concerned, the Court is of the view that for the last half a decade interest has been awarded at the rate of 9% p.a.. The Supreme Court in *Municipal Corporation of Delhi Vs. Association of Victims of Uphaar Tragedy,* AIR 2012 SC 100 upheld the decision of the High Court awarding interest @ 9% p.a.. The same principle was reiterated in this Court's decision in *Aarti Gupta vs M/s Jubilant Oil & Gas Pvt. Ltd.,*

W.P.(C) 1067/2016, decided on 12.02.2020, which reads, *inter alia,* as under:

> *“......*
>
> *8. Till today, the management has not put any document or calculation on record showing as to what amounts were due to be paid to the petitioner at the time of her termination. However, insofar as the aforesaid suggestion has been made by the management that Rs. 3,55,544/- was tendered to her by way of a cheque, it does admit that that quantum of money would be payable. Having sat on it for more than ten years, they would be liable to pay an interest on the aforesaid amount. In Municipal Corporation of Delhi, Delhi vs. Uphaar Tragedy Victims Association & Ors. (2011) 14 SCC 481, the Supreme Court has fixed a simple interest @ 9% per annum payable alongwith the amounts due to claimants. In a number of cases in the Motor Accident Claim Matters also, this Court has fixed simple interest @ 9% per annum on the amounts due.*
>
> *......”*

3. The awarded amount has been deposited.

4. In view of the above, the rate of interest is reduced from 12% to 9% from the date of filing of the claim petition till its realization.

5. The amount of compensation awarded towards non-pecuniary head of “loss of love and affection” had been granted at Rs.1,00,000/- per claimant and lump sum amount of Rs.1,50,000/- was granted towards “loss of consortium” to all five claimants.

6. In terms of the dicta of Supreme Court in *Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram & Ors.* 2018 SCC OnLine SC 1546 each of the claimants, including the children who had attained the age of majority, would be entitled to compensation towards "loss of love and affection" and loss of consortium" at the rate of Rs.50,000/- and Rs.40,000/- respectively. The same is awarded to each of the claimants. The amount payable in terms of the above shall be (Rs.50,000/- + Rs.40,000)x5(claimants) = Rs.4,50,000/-. Furthermore, in terms of dicta of the Supreme Court in *National Insurance Co. Ltd. vs. Pranay Sethi & Ors.*, (2017) 16 SCC 680, compensation of Rs.15,000/- shall be payable under each head of "loss of estate" and "funeral expenses". Apropos the breach of policy condition, the principle of "pay and recover" as enunciated in *Manuara Khatun and Ors. Vs Rajesh Kumar Singh and Ors,* 2017 (4) SCC 796, and followed by this Court in *Shriram General Insurance Co. v/s Anila Devi & Ors,* 24.07.2019, shall be applied for the insurer.

7. A requisite amount in terms of this order shall be deposited by the petitioner before the Tribunal within three weeks from the date of receipt of copy of this order to be released to the beneficiary (ies) of the Award in terms of the scheme of disbursement specified therein.

8. The appeal is disposed of in the above terms. The statutory amount along with interest accrued be released to the appellant.

NAJMI WAZIRI, J

MARCH 04, 2020/A