(2017) 12 DEL CK 0133

In the Delhi High Court

Case No : MAC Appeal No. 1147 Of 2012, 197 Of 2016, Civil Miscellaneous No. 18535 Of 2012

Bajaj Allianz General Insurance Company Ltd. APPELLANT

Vs

Baljinder Kaur @ Baljit Kaur & Ors RESPONDENT

Date of Decision : 05-12-2017

Acts Referred:

Citation : (2017) 12 DEL CK 0133

Hon'ble Judges : R.K.Gauba, J

Bench : Single Bench

Advocate : Suman Bagga, Anjali Chawla

Final Decision : Disposed Of

Judgement

R.K.Gauba, J

1. Surjit Singh was travelling in a Maruti Van bearing registration no.DL-3CZ-1437 (van), driven by Sumit Kumar (driver), a respondent in these appeals on 08.07.2003, the van carrying several other persons. It came to be involved in a collision at about 02.00 hours with a truck bearing registration no.UP-30A-0768 (truck). As a result, Surjit Singh suffered injuries which proved fatal. The accident claim case (MACT suit no. 251/04) was instituted on 20.08.2004 by his wife and three other members of the family (collectively, the claimants) dependent on him.

2. The case was put to inquiry and decided by judgment dated 27.07.2012 whereby the said driver was held responsible for the collision. The van was admittedly insured against third party risk for the period in question with Bajaj Allianz General Insurance Company Ltd. (insurer).

3. The Motor Accident Claims Tribunal (Tribunal) awarded compensation in the total sum of Rs.5,27,000/- and directed the insurer to pay with interest at the rate of 7.5% p.a. The said amount included Rs.4,74,912/- as loss of dependency besides Rs.25,000/- for loss of love and affection, Rs.10,000/- for loss of

consortium, Rs.10,000/- for loss to estate and Rs.7,000/- for funeral expenses.

4. The insurer, by its appeal (MACA 1147/2012), questions the said award on the ground that the evidence of Chattar Pal (PW-3), presented as an eye witness, has been wrongly believed and that there was no proof of negligence on the part of the van driver, the responsibility being of the truck driver who had suddenly stopped the vehicle coming in the path of the van. The insurer also questions the calculation of loss of dependency submitting that, in her evidence, the widow (PW-1) had described the deceased to be aged 37 years old and therefore, the choice of multiplier is inappropriate.

5. The claimants had come with cross-objections (CM 13589/2015) which were directed to be registered as an independent appeal by order dated 09.02.2016. The cross-appeal (MACA 197/2016) sought enhanced compensation. Both the appeals were put in the list of 'Regulars' as per order dated 09.022016. When they are called out for hearing, there is no appearance on behalf of the claimants. The learned counsel for the insurer has been heard and with her assistance the record perused.

6. The plea on the issue of negligence must be rejected. There is no reason why the evidence of PW-3 should be disbelieved. He was a passenger in the van at the time of the accident. He has explained the sequence of events leading to the collision. Even if it were to be assumed that the truck driver was also responsible to an extent he having suddenly brought his vehicle to a halt, it would at the most a case of composite negligence. The choice of the claimants to initiate action against either of the vehicles cannot be defeated, there being no effort made during the course of inquiry by the insurer of the van to have the driver, owner or insurer of the truck also joined as party respondents.

7. The plea about the age of the deceased also must be rejected. The tribunal has noted that the Voter I card of the deceased (Ex. PW1/4) would reveal the age of the deceased as on 01.01.2002 to be 27 years. In these circumstances, there is no case made out for any interference with the choice of multiplier.

8. It is noted that the claimants had not proved by any clear evidence the actual earnings of the deceased. The vague plea in their appeal that he was earning more than Rs.9,000/- p.m. is not supported by any evidence. In these circumstances, the reliance on the minimum wages of skilled worker (Rs.3,104/-) as taken into account by the tribunal is correct. However, following 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 of increase in income to the extent of 40% would deserve to be added. Thus, the loss of dependency is re-computed as [Rs.3,104/- x 140/100 x 3/4 x 12 x 17] Rs.6,64,876.80, rounded off to Rs.6,65,000/-.

9. 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 for loss to estate and funeral expenses are added. Thus, the total compensation is computed as [Rs.6,65,000/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/-] Rs.7,35,000/- (Rupees Seven lakh and thirty five thousand only).

10. The award is modified accordingly.

11. Following the consistent view taken by this court, the rate of interest is increased to 9% 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.]

12. It is directed that the entire enhanced portion of the award will fall to the share of Baljinder Kaur @ Baljit Kaur (widow) only, it to be released to her in the form of an interest bearing fixed deposit receipt taken out from a nationalized bank for a period of ten years with right to draw periodic interest.

13. By order dated 02.11.2012 on MACA 1147/2012, it was informed that the entire awarded amount was deposited with the tribunal. In this view, execution of the award was stayed. The amount thus deposited will now be released to the claimants in terms of the judgment of the tribunal. The enhanced portion of the award with corresponding interest will be deposited by the insurer with the tribunal within 30 days making it available to be released to the claimant.

14. The statutory amount shall be refunded after proof of award having been satisfied is shown.

15. Both appeals and the pending application are disposed of in above terms.