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**(2018) 04 DEL CK 0410**

**In the Delhi High Court**

**Case No :** MAC.APP. No. 1155 Of 2012, Civil Miscellaneous No. 18665, 18666 Of 2012

HDFC Ergo General Insurance Co. Ltd

APPELLANT

Vs

Kulwant Kaur (Since Deceased) Thr. Lrs & Ors

RESPONDENT

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**Date of Decision :** 12-04-2018

**Acts Referred:**

**Citation :** (2018) 04 DEL CK 0410

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

**Bench :** Single Bench

**Advocate :** Shrey Mehta, Santosh Kumar, Digvijay Singh Jaswal

**Final Decision :** Disposed Of

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**Judgement**

R.K.Gauba, J

1. The appeal at hand has been preferred by the insurance company (insurer) against which the liability to pay compensation determined by the Tribunal has been fastened by the judgment dated 29.05.2012 passed on the accident claim case (MACT No. 109/2011) which was instituted on 22.03.2011 by the first to fifth respondents on their behalf and on behalf of the respondent No. 5A (all collectively, the claimants) on account of death of Gopal Singh, aged 67 years, due to injuries suffered in motor vehicular accident that had occurred on 30.11.2010 due to negligent driving of motor vehicle described as truck bearing registration no. RJ-23GA-3257 (the truck), the sixth and seventh respondents herein having been proved to be the driver and the owner of the said truck on the relevant date and time. The Tribunal computed the compensation in the total sum of Rs.14,40,000/-, it being inclusive of Rs.9,75,000/- towards loss of dependency, Rs.1,50,000/- towards loss of love and affection, Rs.2,50,000/- towards loss of estate, Rs.15,000/- for funeral charges, and Rs.50,000/- for loss of consortium. The insurance company was called upon to pay the said amount with interest at the rate of 9% (nine per cent) per annum with effect from 17.01.2011. The compensation was apportioned to the extent of 75% in favour

of the first respondent (the widow) and the balance 25% distributed equally amongst the other claimants. The tribunal also directed the insurance company to pay Rs.70,000/- to one of the two counsel representing the claimants and Rs.30,000/- to other, besides Rs.15,000/- as out of pocket expenses.

2. During the pendency of the appeal, the first respondent (the widow Kulwant Kaur) died on 10.01.2015. The factum of death has already been noted on record. She is survived by the second to fifth respondents and respondent No. 5A who are already on record.

3. The grievance of the insurance company about the error in calculation of loss of dependency is correct to the effect that there was no occasion for the element of future prospects of increase to the extent of 30% being added to the calculation, this being wholly impermissible in view of the ruling of 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. The insurance company, however, also contends that it was improper on the part of the tribunal to make deduction on account of personal and living expenses only to the extent of one-third, it being the submission that the children were all well settled and, therefore, they could not have been treated as dependants. This argument cannot be accepted as the testimony of one of the said sons (PW1) about the second son being dependent has gone unchallenged and unimpeached.

In these circumstances, the deduction to the extent of one-third is correct.

5. The loss of dependency is re-calculated, without inclusion of the element of future prospects on the multiplier of 5, with the proven income of Rs.2,25,000/- per annum. The same works out to  $(2,25,000/- \times \frac{2}{3} \times 5)$  Rs.7,50,000/-.

6. The non-pecuniary damages awarded by the tribunal are also excessive. They have to be brought in sync with the dispensation in Pranay Sethi (supra). In their lieu, Rs.40,000/- towards loss of consortium and Rs.15,000/- each towards loss of estate and funeral expenses are added. The total compensation comes to  $(7,50,000+40,000+15,000+15,000)$  Rs.8,20,000/-. The award is modified accordingly. Needless to add, it shall carry interest as levied by the tribunal.

7. By order dated 05.11.2012, the insurance company had been directed to deposit 60% of the awarded amount with upto date interest with UCO Bank in the name of the claimants within the period specified and such amount upon deposit was allowed to be released to the claimants. The counsel for the claimants clarifies that no amount was released pursuant to the above-mentioned direction to the first respondent (claimant) during her lifetime, and, therefore, the substantial amount has remained with the bank in the form of fixed deposit receipts, though some portion (25%) has been released by the bank to the other claimants by transfer into their respective accounts.

8. In above view, it is directed that the balance amount under the modified

award shall be distributed equally amongst the surviving five claimants. The registry shall calculate the amounts, thus payable to each claimant, and have the same released by the Bank from the remainder in deposit, refunding the excess in deposit to the insurance company. Conversely, if there is any deficiency in the deposit of payment by the insurance company, the claimants will have the liberty to take out execution proceedings.

9. There being no justification for such inclusion, the directions by the tribunal about the counsel fee and out of pocket expenses are set aside.

10. The statutory deposit shall be refunded.

11. The appeal and the applications filed therewith are disposed of in above terms.