(2017) 12 DEL CK 0096

In the Delhi High Court

Case No : MAC Appeal No. 1120 Of 2012, 404 Of 2013, Civil Miscellaneous No. 17970, 17972 Of 2012

ICICI Lombard General Insurance Company Ltd — APPELLANT

Vs

Rukmani Devi & Ors — RESPONDENT

Date of Decision : 04-12-2017

Acts Referred:

Citation : (2017) 12 DEL CK 0096

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

Bench : Single Bench

Advocate : Neerja Sachdeva, Kavita Tyagi, Navneet Goyal

Final Decision : Disposed Of

Judgement

R.K.Gauba, J

1. Deep Chand, born on 15.01.1963, suffered injuries in a motor vehicular accident that had occurred on 31.07.2008 due to negligent driving of truck bearing registration no.HR-38M-5746 admittedly insured against third party risk with ICICI Lombard General Insurance Company Ltd. (insurer) for the period in question and died in the consequence. His wife joining six other members of the family (collectively, the claimants) instituted accident claim case (suit no.400/2011/2008) on 16.10.2008 seeking compensation.

2. The Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 06.03.2012, awarded compensation in the total sum of Rs.35,36,672/- fastening the liability to pay with interest at the rate of 9% p.a. on the insurer, calculating it thus :-

Loss of dependency

Rs.34,41,672/-

Funeral expenses

Rs.25,000/-

Love and affection

Rs.60,000/-

Loss of consortium

Rs.10,000/-

Total

Rs.35,36,672/-

3. The insurer by its appeal (MACA 1120/2012) has questioned the award on the ground that since two of the claimants were married daughters of the deceased, they could not have been included amongst the dependents and, thus, the personal and living expenses should have been deducted to the extent of one-fourth. It is also the argument of the insurer that income tax liability should have been deducted in calculation of loss of dependency. The insurer also argues that non-pecuniary damages are not in accord with 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.

4. Per contra, the claimants by their appeal (MACA 404/2013) argued that one of the daughters was handicapped and therefore, deduction of one-fifth may be retained. It is also the grievance of the claimants that the tribunal had not correctly considered the income reflected in the salary slip (Ex. PW3/2) for July 2008 as it had assumed the net income to be the real income.

5. The submissions of the claimants about the income are correct. The gross emoluments were in the range of Rs.24,464.66. There was no reason why net income after deduction of amounts towards provident fund, income tax liability, accident insurance etc. should have been taken into account. It is only the income tax liability which had to be kept out. On gross emoluments of Rs.24,465/- (rounded off), the total annual income comes to [Rs.24,465/- x 12] Rs.2,93,580/-. Since the income tax liability against such income during the financial year 2008-2009 would be about Rs.9,500/-, the loss of dependency is to be calculated on the notional income of (Rs.2,93,580 - 9,500/-) Rs.2,84,080/-. The ruling in Sarla Verma & Ors. vs. Delhi Transport Corporation & Anr., (2009) 6 SCC 121, applies and therefore, there is no escape from deduction on account of personal and living expenses to the extent of one-fourth. Adding the future prospects of increase to the extent of 30% as per Pranay Sethi (supra), loss of dependency on the multiplier of 13 is re-computed as [Rs.2,84,080/- x 130/100 x 3/4 x 13] Rs.36,00,714/-, rounded off to Rs.36,01,000/-.

6. Following the dispensation in Pranay Sethi (supra), in lieu of the non-pecuniary awards granted by the tribunal, Rs.40,000/- is added towards loss of consortium and Rs.15,000/- each is added towards loss to estate and funeral

expenses.

7. Thus, the total compensation in the case comes to [Rs.36,01,000/- + Rs.40,000/- + Rs.15,000/- + Rs.15,000/-] Rs.36,71,000/- (Rupees Thirty six lakh and seventy one thousand only). The award is modified accordingly. It shall carry interest as levied by the tribunal.

8. It is noted that the tribunal had apportioned the award by specifying the amounts in favour of different claimants.

9. By order dated 16.10.2012, the entire awarded amount with up-to-date interest was directed to be deposited with UCO Bank, Delhi High Court branch and from out of such deposit, seventy five percent (75%) was permitted to be released to the claimants. The amount granted by the tribunal with corresponding interest shall now be released in terms of the impugned judgment. The entire enhanced portion of the award with corresponding interest, however, shall fall to the share of Rukmani Devi (widow) alone, to be released to her accordingly. The Registry shall release the balance to the claimant while refunding the statutory deposit to the insurance company upon proof is shown of the award having been satisfied. The insurance company will be obliged to satisfy the enhanced award by requisite deposit with the tribunal within 30 days, making it available to be released to the claimant.

10. The appeal and the pending applications are disposed of in above terms.

