(2017) 11 DEL CK 0398

In the Delhi High Court

Case No : MAC. Appeal No. 499 Of 2012

National Insurance Co. Ltd APPELLANT

Vs

Prem Chand Gudial & Ors RESPONDENT

Date of Decision : 16-11-2017

Acts Referred:

Citation : (2017) 11 DEL CK 0398

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

Bench : Single Bench

Advocate : Pankaj Seth

Final Decision : Disposed Of

Judgement

R.K.Gauba, J

1. Sachin Gudial, a bachelor, aged 24 years, earning his livelihood from a private employment died due to injuries sustained in motor vehicular accident

that occurred on 05.06.2011, on account of negligent driving of motor vehicle described as Eicher Canter bearing registration no. HR 38Q 9198,

admittedly insured against third party risk for the period in question with appellant (insurer). His parents, first and second respondents (collectively, the

claimants) instituted accident claim case (Regn. no. 616/2011) on 05.07.2011 which was decided by the tribunal, by judgment dated 18.02.2012,

awarding Rs. 17,06,400/- as compensation with interest @ 9% per annum, the liability having been fastened against the insurer.

2. The insurer presses the appeal to question the method of calculation of loss of dependency taking exception to the element of future prospects of

increase in income being added to the extent of 50%, submitting that 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., this should have been restricted to 40%.

3. Having heard the learned counsel for the appellant, this Court finds no merit in the submission made. The mere fact that the deceased was in

private employment would make no difference. The fact remains that he was in regular employment with the same employer since 2006. In these

circumstances, the element of future prospects has to be added and it has been correctly factored in by the tribunal at 50%.

4. It is, however, noted that there is an error committed by the tribunal in choosing the multiplier of 13. Having regard to the ruling of the Constitution

Bench in Pranay Sethi (supra), endorsing the earlier view taken in Sarla Verma & Ors. v. Delhi Transport Corporation & Anr., (2009) 6 SCC 121, the

multiplier has to be picked up according to the age of the deceased. Since the deceased was 24 years old, the multiplier of 18 would apply. It being the

bounden duty of this Court to ensure that just compensation is awarded, the loss of dependency is recomputed on (14,200 x 150 Ã·100 x 1/2 x 12 x 18)

Rs. 23,00,400/-, rounded off to Rs. 23,01,000/-.

5. It is noted that the tribunal had added Rs. 25,000/- towards funeral expenses, Rs. 20,000/- for loss of love & affection. This in view of Pranay Sethi

(supra), would not be correct. Instead of the said amounts, Rs. 15,000/- each towards loss to estate and funeral expenses are added.

6. Therefore, the total compensation in the case comes to (23,01,000 + 15,000 + 15,000) Rs. 23,31,000/- (Rupees Twenty Three Lakhs Thirty One

Thousand only). The award is modified accordingly. It shall carry interest as levied by the tribunal.

7. It is directed that the enhanced portion of the award shall fall to the share of second respondent Rajo Devi (mother) alone, it to be released in her

name in the form of fixed deposit account taken out from a nationalized bank for a period of seven years with right to draw periodic interest.

8. By order dated 07.05.2012, the insurance company had been directed to deposit the entire awarded amount with the claims tribunal within six

weeks. By subsequent order dated 25.02.2013, 60% was permitted to be released to the claimants in terms of the judgment of the tribunal. Since the

award has been increased, the balance lying in deposit shall also be released to the claimants. The insurance company will be obliged to satisfy the enhanced award by requisite deposit with the tribunal within thirty days, making it available to be released.

9. The statutory amount shall be refunded only after proof of the satisfaction of the award being furnished.

10. The appeal is disposed of in above terms.

