
(2019) 04 DEL CK 0111
In the Delhi High Court
Case No : MAC.APP. 1078 Of 2016

Oriental Insurance Co Ltd

APPELLANT

Vs

Shakuntla And Ors

RESPONDENT

Date of Decision : 15-04-2019

Acts Referred:

Motor Vehicle Act, 1988 — Section 166

Citation : (2019) 04 DEL CK 0111

Hon'ble Judges : A.K. Chawla, J

Bench : Single Bench

Advocate : Pankaj Seth, S.N. Parashar

Final Decision : Disposed Off

Judgement

A.K.Chawla, J

1. By the instant appeal, the appellant-the insurer assails the judgment-award dated 15.10.2016 passed by MACT, Shahdara, to the limited extent of quantum of compensation, and, the rate of interest applied, thereon. In view of the restricted challenge to the impugned judgment-award, the advertence to the factual aspects, on which the claim petition was maintained before the Tribunal, is not called for.

After the issuance of the notice of the instant appeal, the claimants-respondent Nos. 1 to 5 have filed the cross-objections under Order 41 R. 22 accompanied with an application being CM No. 17647/2018 seeking condonation of delay in filing such cross-objections. By the cross-objections, the claimants-respondent Nos. 1 to 5 seek enhancement of the compensation awarded. For the reasons given in the application seeking condonation of delay (CM No. 17648/2018), which is supported by an affidavit and to which, no reply has come to be filed, the delay in filing the cross-objections is condoned. Cross-objections be registered separately as MAC APP.

2. The compensation under Section 166 of the Motor Vehicle Act in short, 'the MV

Act', has come to be awarded to the claimants on account of death of Sonu @ Bablu, who died in the motor accident involving bus No. UP 16 BT 9556 in short, the offending vehicle, which was insured with the appellant-the insurer (MAC APPL. 1078/52016). The claimants are the widow, children, widow mother, and, the unmarried sister, of the deceased. The Tribunal has awarded the compensation under the following heads :

S. No.

Name of heads

Amount

1.

Loss of dependency/ contribution to the family

Rs.13,20,696/-

2.

Loss of consortium

Rs.1,00,000/-

3.

Loss of love and affection

Rs.1,00,000/-

4.

Loss of estate

Rs.25,000/-

5.

Funeral expenses

Rs.25,000/-

TOTAL

Rs.15,70,696/-

3. In assessing the compensation under the head of loss of dependency/ contribution to the family, the Tribunal has applied the minimum wages for unskilled worker in NCT of Delhi at Rs.8,632/- and the annual income has thus been assessed at Rs.1,03,584/-. As regards this head, the compensation awarded is in the sum of Rs.13,20,696/-. While, the appellant-the insurer, has no grievance, to even compensation, the claimants, by way of cross-objections, seek enhancement thereof, on the premise that the compensation so awarded does not take into account the future prospects in consonance with the ratio of

the judgment in 'National Insurance Company Limited vs. Pranay Sethi and Ors.' 2017 SCC OnLine SC 1270. Undisputedly, the deceased was a painter, aged about 27 years, and, Pranay Sethi's case (supra), recognises the grant of future income/prospects and prescribes addition of 40% of the actual income, to assess the loss of income/dependency. During the course of hearing, both the Id. Counsel for the parties concede that no such addition has come to be made by the Tribunal in awarding compensation under the subject head, and, on an addition made to such an effect, the compensation awarded under the head of loss of income/dependency, would stand enhanced from Rs.13,20,696/- to Rs.18,48,975/-. When the ratio of Pranay Sethi's case (supra) comes to be so applied, the compensation under the heads of loss of consortium, loss of estate and funeral expenses also require to be modified, in consonance therewith. Though, the Id. Tribunal has awarded compensation of Rs.1,00,000/- under the head of consortium towards spousal only, in Pranay Sethi's case, the Supreme Court, has prescribed compensation under this head to be Rs.40,000/-. In Magma General Insurance Co. Ltd. vs. Nanu Ram Alias Chuhru Ram & Ors., 2018 SCC Online SC 1546, the Supreme Court taking note of Pranay Sethi's case (supra) has noted that consortium is a compendious term which encompasses spousal consortium, parental consortium and filial consortium. In view of the ratio of the judgment in Magma's case (supra), the claimants, other than the widow, who are the children, widow mother and the unmarried sister require to be compensated under the said head, as well. Calculated thus, the compensation under the head of loss of consortium would stand enhanced from Rs.1,00,000/- to Rs.2,00,000/- (Rs.40,000 x 5). Pranay Sethi's case does not provide for any compensation under the head of loss of love and affection. Thus, following the judgments of Pranay Sethi and Magma (supra), the compensation under the different heads would be, as under:

S. No.

Heads of Compensation

As per the Impugned Award

As per the Modified Award

1.

Loss of dependency/ contribution to the family

Rs.13,20,696/-

Rs.18,48,975/-

2.

Loss of consortium

Rs.1,00,000/-

Rs.2,00,000/- (Rs.40,000 x 5)

3.

Loss of love and affection

Rs.1,00,000/-

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4.

Loss of estate

Rs.25,000/-

Rs.15,000/-

5.

Funeral expenses

Rs.25,000/-

Rs.15,000/-

TOTAL

Rs.15,70,696/-

Rs.20,78,975

Total revised compensation, thus, comes to Rs.20,78,975/-. Enhanced compensation shall be deposited by the appellant with the Tribunal within six weeks from today, failing which, enhanced compensation shall attract interest @ 12% p.a. from today. Enhanced compensation so deposited shall be apportioned and disbursed by the Tribunal in consonance with the terms and conditions of the award.

4. As regards the interest on the award amount, the Tribunal has awarded interest @ 12% from the date of filing the petition till realisation. In Pranay Sethi's case (supra), the Supreme Court has awarded interest @ 9% p.a. and it is desirable that same parameters are applied to avoid any disparity in the award of compensation. The interest awarded @ 12% is therefore, reduced and modified to 9% p.a.

5. Statutory deposited with interest, if any, in MAC 1078/2016 shall be released back to the appellant insurance company.

6. Both the appeal and the cross-objections stand disposed off accordingly. Interim orders passed on 21.12.2016 stand vacated.