(2017) 12 DEL CK 0307

In the Delhi High Court

Case No : MAC. Appeal No. 1290 Of 2012, 391 Of 2013, Civil Miscellaneous No. 21086 Of 2012

Oriental Insurance Company Limited APPELLANT

Vs

Kamlesh Pal And Ors RESPONDENT

Date of Decision : 12-12-2017

Acts Referred:

Motor Vehicles Act, 1988 — Section 140, 166

Citation : (2017) 12 DEL CK 0307

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

Bench : Single Bench

Advocate : Pradeep Gaur, O.P. Mannie

Final Decision : Disposed Of

Judgement

R.K.Gauba, J

1. Gaj Ram, then over 51 years of age, employed as baildar with New Delhi Municipal Council (NDMC), suffered injuries in a motor vehicular

accident that had occurred on 10.07.2011 due to negligent driving of motor vehicle described as Wagon-R car, bearing registration No.DL-9CP-1737

and died in the consequence. Accident claim case (MACT No.11/11) was instituted on 22.10.2011 by his wife and two other members of the family

dependent upon him (collectively, the claimants) seeking compensation under Sections 166 and 140 of the Motor Vehicles Act, 1988. The Tribunal,

after inquiry, by judgment dated 29.09.2012, upheld the said case and awarded Rs.30,58,884/- as compensation fastening the liability to pay with

interest @ 9% per annum on Oriental Insurance Company Limited (insurer) , it admittedly having issued insurance policy covering third party risk in

respect of the vehicle in question.

2. The insurer by its appeal (MAC APP.1290/2012) questioned the award on the ground the loss of dependency in the sum of Rs.29,38,884/- has been

wrongly calculated by inclusion of future prospects to the extent of 30%. Exception is also taken to the non-pecuniary damages which have been

included in the award in the sum of Rs.1,00,000/- for loss of love and affection and Rs.10,000/- each for loss to estate and cremation charges.

3. Per contra, the claimants by their appeal (MAC APP.391/2013) argue that the tribunal fell into error by deducting certain allowances from the last

salary drawn, this rendering the award inadequate.

4. The contention of the claimants in their appeal respecting the salary is found to be correct. Last salary slip (Ex.PW-1/3) reveals total emoluments to

be in the sum of Rs.31,152/-. There is no good reason to deduct the allowances reflected in the said salary slip. All such allowances were regular in

nature and part of service conditions of the deceased with New Delhi Municipal Council and would, thus, result in corresponding savings. The gross

annual income, thus, was (31151/- x 12) Rs.3,73,824/-.

5. Having regard to the rate of income tax during the financial year 2011-2012, there would be a liability of income tax to the extent of Rs.10,000/-.

6. Given the age of the deceased at the time of the cause of action, following the 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., the future prospects will have to be restricted to

15%. Thus, after deducting one-third towards personal and living expenses and applying the multiplier of 11, the loss of dependency is re-computed as

(3,73,824/- (-) 10,000/- x 115/100 x 2/3 x 11) Rs.30,68,249/- rounded off to Rs.30,69,000/-.

7. The non pecuniary awards also require to be brought in sync with dispensation in Pranay Sethi (supra). Thus, in lieu of amounts added by the

tribunal Rs.40,000/- towards loss of consortium and Rs.15,000/- each for loss to estate and funeral expenses are added. The total compensation

payable in the case is, thus, calculated as (30,69,000/- + 40,000/- + 15,000/- + 15,000/-) Rs.31,39,000/- (Rupees Thirty One Lacs Thirty Nine Thousand

Only).

8. The award is modified accordingly. It shall carry interest as levied by the tribunal.

9. The apportionment of the award as directed by the tribunal shall be followed.

10. By order dated 18.12.2012 (on the file of MAC APP.1290/2012), the insurance company was directed to deposit 75% of the awarded amount

with proportionate interest with the tribunal as a pre-condition to the stay of execution. The amount, thus, deposited was permitted to be released in the

form of fixed deposit in favour of the claimants.

11. The insurance company will be obliged to satisfy the balance of its liability under the modified award by requisite deposit with the tribunal within

thirty days, making it available to be released to the claimants.

12. The statutory amount deposited by the insurer will be refunded.

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

