(2017) 12 DEL CK 0085

In the Delhi High Court

Case No : MAC.APP. No. 698 Of 2015

Shri Ram General Insurance Co Ltd — APPELLANT

Vs

Gaurav Kindra & Ors — RESPONDENT

Date of Decision : 04-12-2017

Acts Referred:

Citation : (2017) 12 DEL CK 0085

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : P. Acharya, Anshuman Bal

Final Decision : Disposed Of

Judgement

Sunil Gaur, J

1. Appellant is the Insurer, who is challenging the impugned Award of 10th July, 2015 in this appeal on the ground that instead of 50% addition towards future prospects, 40% addition ought to have been made in view of recent Constitution Bench's judgment in National Insurance Company Ltd. Vs. Pranay Sethi & ors. 2017 SCC OnLine SC 1270 and deduction towards personal expenses of the deceased ought to be half (1/2) and not one third (1/3rd), as the deceased is survived by only one legal heir.

2. The facts giving rise to this appeal, as already noted in the impugned order, are that on 2nd October, 2013, deceased Jyoti was a pillion rider on a scooty with her husband and had met with an accident at Pillar No. 723, Main Najafgarh Road, Uttam Nagar, Binda Pur, Delhi at about 9:45 p.m. and sustained fatal injuries. Learned Tribunal, in the impugned Award has granted 50% addition towards future prospects and has deducted 1/3rd towards personal expenses of the deceased.

3. A Constitution Bench of this Court in Pranay Sethi (Supra), has declared that addition of 40% of the established income towards 'future prospects' should be

made where the deceased has fixed salary and is below the age of 40 years and the compensation under the non pecuniary heads, ought to be Rs. 70,000/-. On this aspect, Supreme Court in a later decision of Laxmidhar Nayak & ors. Vs. Jugal Kishore Behera & ors. 2017 SCC OnLine SC 1386, pertaining to an accident of the year 1991, has granted compensation strictly in terms of Pranay Sethi (Supra).

4. Upon hearing and on applying the ratio of decision of Constitution Bench in Pranay Sethi (Supra) to the facts of the instant case, impugned Award is modified to the extent that towards future prospects, instead of 50%, addition of 40% is made and instead of deducting 1/3rd towards personal expenses of deceased, 50% is to be deducted. Accordingly, 'loss of dependency' is recalculated as Rs. 15,44,961/- (Rs. 1,22,616 X 50% X 140/100 X 18). The compensation amount granted by the learned Tribunal under the head of 'Funeral Expenses' is accordingly reduced from Rs. 25,000/- to Rs. 15,000/- and under the head 'loss of estate' is reduced from Rs. 1,00,000/- to Rs. 15,000/-. Compensation granted under the head 'loss of consortium' is reduced from Rs. 1,00,000/- to Rs. 40,000/-. Accordingly, the total compensation under the non-pecuniary heads is reduced from Rs. 2,25,000/- to Rs. 70,000/-. Thus, the compensation amount payable stands reduced from Rs. 24,32,088/- to Rs. 16,14,961/-.

5. This Court is informed that in terms of order of 4th September, 2015, the awarded amount with upto date interest stands deposited with the Registry of this Court, out of which 50% was permitted to be released to respondents and remaining amount was kept in fixed deposit receipt. Registry is directed to release the balance payable to respondent-claimants in terms of modification as ordered above and refund the excess amount to appellant- Insurance Company. Statutory deposit, if any, be refunded to appellant as per rules.

6. With aforesaid directions, this appeal is disposed of.

