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(2017) 11 DEL CK 0333

In the Delhi High Court

Case No : MAC. Appeal No. 615 Of 2012

Shyam Kala & Anr APPELLANT

Vs

Reliance General Insurance Company Ltd. & Ors RESPONDENT

Date of Decision : 20-11-2017

Acts Referred:

Citation : (2017) 11 DEL CK 0333

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

Bench : Single Bench

Advocate : A.K. Soni

Final Decision : Disposed Of

Judgement

R.K.Gauba, J

1. Smita Saini, an unmarried girl, aged 28 years, suffered injuries in a motor vehicular accident that had occurred on 28.02.2010 involving negligent

driving of a Tata truck bearing registration no.HR-38K-9193 admittedly insured against third party risk with the first respondent (insurer) for the period

in question and died in the consequence. Her parents (appellants herein) instituted accident claim case (MACT 43/12/10) on 13.04.2010 seeking

compensation.

2. The Motor Accident Claims Tribunal (Tribunal) held inquiry and, by judgment dated 17.02.2012, awarded compensation in the total sum of

Rs.17,38,500/-, the liability having been fastened to pay with interest at the rate of 7.5% p.a. in their favour against the first respondent, the said

amount inclusive of Rs.17,03,500/- towards loss of dependency, Rs.25,000/- towards loss of love and affection and Rs.5,000/- each for loss to estate

and funeral expenses.

3. The claimants by the appeal at hand sought enhanced compensation submitting various grounds.

4. The appeal was admitted and directed to be shown in the list of â?? Regularsâ??, to come up on its own turn as per order dated 14.01.2016. When

it is called out for hearing, there is no appearance for the appellants. The counsel for the insurer has been head and the record perused.

5. It was proved before the tribunal that the deceased was employed with Reliance Communications Ltd. as an employee in the position of L-3 by

letter dated 31.01.2008 (Ex. PW3/A), the last emoluments earned being salary in the sum of Rs.29,266.43 for the month of February 2010 (Ex.

PW3/D). The tribunal has correctly deducted the income tax liability of Rs.3,458/- and has taken the monthly income for Rs.25,808/-.

6. The calculation of loss of dependency by the tribunal, however, fell into error due to omission give any benefit of future prospects of increase and

by applying the multiplier of 11 on the basis of the age of the claimant / mother. 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 element of future prospects of

increase in income will have to be added to the extent of 50% and the multiplier of 17 invoked.

7. The loss of dependency is, thus, re-calculated as [Rs.25,808/- x 150/100 / 2 x 12 x 17] Rs.39,48,624/-, rounded off to Rs.39,49,000/- (Rupees Thirty

nine lakh and forty nine thousand only). The awards under the non-pecuniary heads of damages also need to be brought in accord with the ruling in

Pranay Sethi (supra). Therefore, amounts of Rs.15,000/- each towards loss of estate and funeral expenses are added.

8. The total compensation is re-computed as [Rs.39,49,000/- + Rs.15,000/- + Rs.15,000/-] Rs.39,79,000/- (Rupees Thirty nine lakh and seventy nine

thousand only).

9. The award is modified accordingly.

10. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum from the date of filing of the petition till

realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.]

11. The first respondent (insurer) is directed to satisfy the enhanced award by

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requisite deposit within 30 days with the tribunal. The entire amount

now to be paid in terms of the modification hereby ordered, shall be released as exclusive share of the first appellant Shyam Kala (mother), in the

form of an interest bearing fixed deposit receipt for a period of ten years with right to draw periodic interest.

12. The appeal is disposed of in above terms.

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