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(2017) 12 DEL CK 0101

In the Delhi High Court

Case No : MAC Appeal No. 1138, 1139 Of 2012

United India Insurance Company Limited APPELLANT

Vs

Pooja & Ors RESPONDENT

Date of Decision : 04-12-2017

Acts Referred:

Citation : (2017) 12 DEL CK 0101

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

Bench : Single Bench

Advocate : A.K. De, Zadhid Ali, Navneet Goyal, Kavita Tyagi

Final Decision : Disposed Of

Judgement

R.K.Gauba, J

1. Dinesh Maan and Sudesh Kumar, suffered injuries in a motor vehicular accident that had occurred on 03.05.2009, due to negligent driving of motor vehicle described as car bearing registration No.DL-4CAF-3479 and died in the consequence. Two accident claim cases (MACT No792/10/09 and MACT No.793/10/09) were instituted by their respective dependent family members (hereinafter referred to as "the claimants") on 11.09.2009. They were subjected to enquiry and, by separate judgments dated 11.07.2012, the tribunal held that the death had occurred due to negligent driving of vehicle insured with the appellant (insurer), it being held liable to pay the compensation thereby determined.

2. In the claim case on account of death of Dinesh Maan, the compensation was calculated thus:-

Sl.No.

Heads

Amount (in Rs.)

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1.

Loss of dependency

31,31,532/-

2.

Funeral charges

20,000/-

3.

Loss of estate

1,00,000/-

4.

Loss of consortium

50,000/-

5.

Loss of love and affection and company, etc.

2,00,000/-

6.

Loss of care and attention, etc.

1,00,000/-

Total

36,01,532/-

3. In the claim case on account of death of Sudesh Kumar, the compensation was calculated thus:-

Sl.No.

Heads

Amount (in Rs.)

1.

Loss of dependency

46,99,344/-

2.

Funeral charges

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25,000/-

3.

Loss of estate

1,00,000/-

4.

Loss of consortium

50,000/-

5.

Loss of love and affection and company, etc.

2,40,000/-

6.

Loss of care and attention, etc.

1,00,000/-

Total

36,01,532/-

4. The liability to pay the compensation in each matter has been fastened by the tribunal with interest @ 12% per annum, there being further direction to pay counsel fee and out of pocket expenses in each case, Rs.30,000/- and Rs.10,000/- in the first case and Rs.25,000/- besides Rs.5,000/- in the second case.

5. The insurer came up with these appeals challenging the computation of compensation awarded, the rate of interest levied and the directions about payment of counsel fee and out of pocket expenses.

6. In case of Dinesh Maan, the claimants had proved the salary received by the deceased from Korus Engineering Solutions Pvt. Ltd. by document (Ex.PW-4/2), which reveals the total emoluments in the sum of Rs.11,000/- and the annual salary package of Rs.1,63,740/-, it inclusive of food allowance and conveyance allowance, to which exception is taken. In case of Sudesh Kumar, the income of the deceased was proved by salary slip (Ex.PW-1/B) issued by North Delhi Power Limited (NDPL) in whose employment the deceased was engaged. The claimants had also proved by salary slip (Ex.PW-2/2) for the month of April, 2009 which, for purposes of Form 16 (income tax liability), also indicated the gross total income of Rs.1,81,894-. The tribunal took the emoluments shown earned in the month of April, 2009 as the bench mark, the objection of the insurer being that it is the gross total income declared for income tax purposes which has been taken as the basis.

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7. Both the above contentions in each case must be rejected.

8. There is no reason why the above mentioned allowances earned by the deceased Dinesh Maan should be kept out. They were part of the regular terms and conditions of the service and would lead to corresponding savings and, thus, have a bearing on the loss of dependency. The same logic applies to the other case. Salary for purposes of income tax calculation is distinct from earnings.

9. There is, however, substance in the grievances in these cases about the non pecuniary heads of damages which are way above the dispensation as approved by 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.

10. Thus, in lieu of non-pecuniary damages awarded by the tribunal, Rs.40,000/- towards loss of consortium and Rs.15,000/- each towards loss of estate and funeral expenses are added.

11. The compensation in the case of Dinesh Maan is re-calculated as (31,31,532/- + 40,000/- + 15,000/- + 15,000/-) Rs.32,01,532/-rounded off to Rs.32,02,000/- (Rupees Thirty Two Lacs and Two Thousand Only).

12. In case of Sudesh Kumar, the compensation is determined as (46,99,344/- + 40,000/- + 15,000/- + 15,000/-) Rs.47,69,344/- rounded off to Rs.47,70,000/- (Rupees Forty Seven Lacs Seventy Thousand Only).

13. The awards are modified accordingly.

14. There being no justification for imposition of higher rate of interest, following the consistent view taken by this Court, the rate of interest is reduced to nine per cent (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.].

15. There being no justification for such inclusion, the directions with regard to payment of counsel fee and out of pocket expenses are set aside.

16. Both the appeals are disposed of accordingly.

17. By order dated 30.10.2012, (passed in MAC APP.1138/2012), the insurer was directed to deposit seventy five percent (75%) of the awarded amount along with interest @ 9% per annum, with the tribunal and upon such deposit the same was ordered to be released to the claimants.

18. By order dated 30.10.2012, (passed in MAC APP.1139/2012), the insurer was directed to deposit sixty percent (60%) of the awarded amount along with interest @ 9% per annum, with the tribunal and upon such deposit the same was ordered to be released to the claimants.

19. The insurer is directed to satisfy the remainder of its liability in each cases, by requisite deposit with upto date interest with the tribunal within thirty days,

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making it available to be released to the claimants in terms of the impugned award.

20. The statutory amount shall be refunded to the appellant in each case, upon the proof of award having been satisfied is shown.

21. Both the appeals stand disposed of in above terms.

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