(2017) 12 DEL CK 0100

In the Delhi High Court

Case No : MAC Appeal No. 1129 Of 2012

United India Insurance Company Limited APPELLANT

Vs

Sarita Devi & Ors RESPONDENT

Date of Decision : 04-12-2017

Acts Referred:

Citation : (2017) 12 DEL CK 0100

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

Bench : Single Bench

Advocate : Shoumik Mazumdar

Final Decision : Disposed Of

Judgement

R.K.Gauba, J

1. Ram Naresh Mishra was travelling in a tempo bearing registration No.HR63A-2814 when it met with an accident on 18.06.2009 resulting in he suffering injuries and dying in the consequence. On accident claim case (MACT No.1184/2010), instituted by first to seventh respondents (collectively, the claimants), the tribunal held inquiry and, by judgment dated 10.05.2012, awarded compensation in the total sum of Rs.19,35,120/-, fastening the liability on the appellant (insurer), it admittedly having issued an insurance policy covering third party risk in respect of the offending vehicle. The said amount was calculated it being inclusive of Rs.25,000/- towards funeral expenses, Rs.1,75,000/- towards loss of estate, Rs.50,000/- towards loss of consortium and Rs.2,00,000/- towards loss of love, affection, guidance, frustration, etc., besides Rs. 14,85,120/- towards loss of dependency, the plea of the insurer about the deceased being a gratuitous passenger having been rejected, the tribunal also adding the liability of payment of Rs.51,000/- towards counsel fee on the insurer.

2. The appeal at hand is pressed to question the non-pecuniary damages as mentioned above and the liability for counsel fee as inappropriate. The insurer also re-agitates that the deceased was a gratuitous passenger and, therefore,

liability should not have been placed at its door.

3. 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 non-pecuniary damages as noted above cannot be upheld and in lieu thereof, Rs.40,000/- towards loss of consortium and Rs.15,000/- each towards loss to estate and funeral expenses are added.

The award of compensation is, thus, reduced to (14,85,120/- + 40,000/- + 15,000/- + 15,000/-) Rs.15,55,120/- rounded off to Rs.15,56,000/-. Needless to add, the amount shall carry interest as levied by the tribunal.

There being no justification for such inclusion, the directions for payment of counsel fee is set aside.

4. As noted by the tribunal in the impugned judgment, the deceased was travelling with the goods of the employer. Therefore, he was a representative of the owner of the goods carried in the vehicle and not a gratuitous passenger. The plea to this effect is rejected.

5. By order dated 09.01.2013, the insurer was directed to deposit the entire awarded amount along with interest with UCO Bank, Delhi High Court, New Delhi, out of which fifty per cent (50%) was ordered to be released to the claimants. The registry shall now re-calculate the award as per modification ordered above, releasing the balance lying in deposit along with interest to the claimants in terms of the impugned award, refunding the excess to the insurer along with proportionate interest.

6. The statutory amount shall also be refunded to the appellant.

7. The appeal stands disposed of in above terms.