R-213 & 214

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: February 01, 2017

(i) + **MAC.APP. 154/2009**

(ii) + **MAC.APP.482/2011**

ICICI LOMBARD GENERAL INSURANCE CO. LTD.

..... Appellant

Through: Mr. Pankaj Seth, Advocate

Versus

GEETA AND ORS. ..... Respondents

Through: Mr. Nitinjya Chaudhary & Mr. Rajiv Trivedi, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

% **ORAL**

1. The above captioned two appeals are directed against common impugned Award of 6th January, 2009, vide which compensation of ₹12,54,000/- with interest @ 7.5% p.a. has been granted to Claimants on account of death of *Vijender,* aged about 43 years, in a road accident on 18th December, 2006.

2. In the above captioned first appeal, Insurer, who has been granted recovery rights against owner of offending vehicle in question, seeks

exoneration. In the above captioned second appeal, Claimant seeks enhancement of compensation. Since these appeals arise out of common impugned Award of 6th January, 2009, therefore, with the consent of learned counsel for the parties, these appeals have been heard together and are being decided by this common judgment.

3. As per order of 26th October, 2009, service is complete.

4. The factual background of this case stands already noted in the impugned Award and so, needs no reproduction. Suffice to note that as per evidence of Claimant, *Mohd. Amil*, a minor, was driving the offending vehicle in question i.e. the motor cycle and there is evidence of official witness regarding income of the deceased to show that he was in permanent employment. On the basis of evidence led, impugned Award has been rendered. The breakup of compensation awarded is as under:-

Loss of dependency	₹11,64,000/-
Loss of love and affection	₹30,000/-
Loss of consortium	₹50,000/-
Funeral expenses	₹5,000/-
Loss of estates	₹5,000/-
Total compensation	₹12,54,000/-

5. Learned counsel for Insurer relies upon Supreme Court's decision in *National Insurance Co. Ltd. v. Swaran Singh* (2004) 3 SCC 297 to contend that driver of motor cycle in question was not holding driving license and so, in such a case, liability to pay the compensation is upon the owner and not the Insurer. Reliance is also placed upon Supreme

Court's decision in *Malla Prakasarao Vs.Malla Janaki & ors.* 2004 (3) SCC 343 in support of above submission.

6. On the contrary, learned counsel for Claimants contends that recovery rights has been rightly granted to the Insurer because the owner- *M. Kamil* has clearly stated in his evidence that he had not allowed *Mohd. Amil*, who was a minor, to drive the motor cycle. To seek enhancement of compensation, learned counsel for Claimants submits that though the deceased was in permanent employment but the assured career progression has not been taken into consideration while assessing the loss of income and that in the normal course, deceased would have become *Safari Supervisor* and so, denial of compensation under the head of future prospects is unjustified. It is also submitted by learned counsel for Claimants that compensation granted under the non-pecuniary heads is on the lower side and it need to be suitably enhanced. Nothing else is urged by the either side.

7. Upon hearing and on perusal of the impugned Award, evidence on record and decisions cited, I find that strictly speaking the liability to pay the awarded amount is of the owner, if a minor is allowed to drive a vehicle without licence. Though it has come in the evidence of owner that motor cycle was driven by the minor without his permission but it cannot be ignored that in the first instance, the owner had asserted before the learned Motor Accident Claims Tribunal that he was driving the motor cycle. A three Judge Bench of Supreme Court in *Swaran Singh (supra)*, while dealing with a case of driver of major age, who did not possess any driving license but was permitted by the owner to drive the vehicle, it has

been authritatively held that the Insurer is entitled to succeed in its defence to avoid the liability to pay the compensation.

8. Supreme Court in a case of minor, in *Jawahar Singh Vs. Bala Jain & ors.* (2011) 6 SCC 425 has reiterated that the liability to pay compensation is of the Insurer, with the recovery rights while observing that it is difficult to accept that keys of the vehicle were taken by the minor without knowledge of the owner. In the peculiar facts of this case, the liability put on the Insurer to pay the awarded amount is justifiable for the reason that accident in question is of the year 2006 and this appeal is pending in this Court since the year 2009 and during pendency of this appeal, awarded amount was deposited by Insurer and in terms of order of 4th April, 2011, 50% of the awarded amount stands already released to the Claimants. Since the owner and driver of offending vehicle are not contesting this appeal, therefore, the impugned Award saddling Insurer with the liability to pay the compensation, is not being interfered with.

9. On the quantum of compensation awarded, this Court finds that learned Motor Accident Claims Tribunal has erred in not granting any compensation under the head of *'future prospects'*, as the deceased was in permanent employment and had prospects of becoming *Safari Supervisor* during his service. The deceased was aged 43 years at the time of accident and so, 30% towards future prospects deserves to be added to assess the loss of income and multiplier of 14 ought to be applied and after deducting 2/3rd towards personal expenses, loss of dependency is reassessed as follows:-

₹9,700/- + ₹2,910/- X 14 X 12 X 2/3 = ₹14,12,320/-

10. So far as compensation awarded under the non-pecuniary heads is

concerned, compensation of ₹50,000/- under the head *'loss of consortium'* appears to be reasonable. However, compensation under the heads *'loss of love and affection, 'funeral expenses'* and *'loss of estate'* appear to be on the lower side. So, compensation under the head *'loss of love and affection'* is enhanced from ₹30,000/- to ₹50,000/-, and *'funeral expenses'* are enhanced from ₹5,000/- to ₹10,000/- and compensation under the head *'loss of estate'* is also enhanced from ₹5,000/- to ₹10,000/-. Thus, the total compensation payable to appellants is re-assessed as under:-

Loss of dependency	₹14,12,320/-
Loss of love and affection	₹50,000/-
Loss of consortium	₹50,000/-
Funeral expenses	₹10,000/-
Loss of estates	₹10,000/-
Total compensation	₹15,32,320/-

11. In view of the aforesaid, the compensation awarded is enhanced from ₹12,54,000/- to ₹15,32,320/- only. The interest @7.5% p.a. granted by the learned Tribunal is in consonance with the rate of interest granted by the Supreme Court in *Rajesh (supra)* and so, rate of interest granted need not be interfered with.

12. Vide order of 4th April, 2011, 50% of the awarded amount deposited by the Insurer was directed to be released to Claimants in the ratio and manner as provided in the impugned Award. It is not disputed that 50% of the awarded amount has been already released to Claimants.

Four weeks' time is granted to Insurer to deposit the enhanced compensation of ₹2,78,320/- with interest @7.5% p.a. from the date of filing of the appeal till the date of deposit, with the Registrar General of this Court. The deposited amount be released to Claimants in the manner as provided in the impugned Award.

13. Upon deposit of the enhanced compensation amount with interest, the Insurer would be at liberty to recover it from the owner of offending vehicle in question in terms of impugned Award and also to seek refund of statutory deposit, if any.

14. With aforesaid modification, the above captioned two appeals are disposed of.

(SUNIL GAUR)
JUDGE

FEBRUARY 01, 2017
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