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

Date of Decision: July 09, 2018

\+   MAC.APP. 117/2013

NEW INDIA ASSURANCE CO. LTD. .... Appellant
Through: Mr. Pankaj Seth, Advocate

Versus

GANGA BAKSH SINGH & ANR. ... Respondents
Through: Mr. S.N.Parashar and Ms. Pankaj Kumari, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 20th October, 2012 grants compensation of ₹3,86,065/- with interest @ 7.5% p.a. to respondents-claimants on account of death of one *Vimlesh*, aged 21 years in a vehicular accident on 27th February, 2011.

2. The factual background of this case, as noticed in the impugned Award, is as under:-

> *"The brief facts, as stated by petitioner, are that on 27.02.2011 Sh. Vimlesh (the deceased) was going to sector-20, Noida from Brahmputra Market, sector-29, Noida, by a Theli rickshaw with his uncle and when he reached opposite Vishwa Bharti School, sector-28, Noida, a vehicle bearing No. DL-9C-3884, hit the rickshaw from back side. The deceased fell down and suffered grievous injuries. It is stated that respondent No.1 was driving the vehicle at a high speed,*

rashly and negligently. It is further stated that Sh. Vimlesh was taken to Kailash hospital and during treatment he died on 01.03.2011. It is stated that deceased was 21 years of age and was working as a cook and was earning Rs.8,000/- per month."

3. On the basis of evidence led, impugned Award has been rendered by Motor Accident Claims Tribunal *(henceforth referred to as "the Tribunal")* and the breakup of compensation awarded is as under:-

1.) Loss of estate	:	₹2,92,383/-
2.) Loss of love & affection	:	₹25,000/-
3.) Funeral expenses	:	₹5,000/-
4.) Medical Expenses	:	₹63,682/-
Total	:	₹3,86,065/-

4. The challenge to impugned Award by learned counsel for appellant-Insurer is on the ground that the Tribunal has ignored the evidence of owner-cum-driver of the vehicle in question and has erroneously held that the accident had occurred due to negligence of the driver of vehicle in question. It is pointed out that the Tribunal has ignored the evidence of R1W2 *Bharat Porwal* and *Jaipal* to fasten the liability on appellant. It is next submitted by counsel for appellant-Insurer that though the Tribunal has held that there was no loss of dependency but still has granted compensation under the head of *"loss of estate"*. The submission of appellant's counsel is that compensation under the head *"loss of estate"* ought to be ₹15,000/- in light of decision of Constitution Bench of Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680. Lastly, it is submitted by counsel for appellant-Insurer that since the Registration Certificate of insured vehicle

had expired prior to the date of accident, so, liability to pay the compensation is of the owner and driver of vehicle in question. In the alternative, it is submitted that recovery rights be granted to appellant-Insurer against owner and driver of vehicle in question.

5. On the contrary, learned counsel for respondent-claimant submits that the compensation awarded is inadequate. Learned counsel for respondent-claimant relies upon Supreme Court's decision in *Ranjana Prakash and Ors. Vs. Divisional Manager & Anr.* (2011) 14 SCC 639 to point out that even without cross-objections, the compensation granted can be enhanced in an appeal filed by Insurer. Thus, it is submitted by learned counsel for respondent-claimant that this appeal deserves to be dismissed while granting suitable compensation.

6. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that the evidence of eye witness – *Shivpal Singh (PW-2)* discloses that the accident had taken place due to negligence of the driver of vehicle in question. Evidence of R1W2 *Bharat Porwal* and *Jaipal,* who were got examined by driver and owner of vehicle in question, have been rightly discarded by the Tribunal, as the version put-forth by them is clearly an afterthought, as it does not find any mention in the written statement. Regarding lapse of Registration Certificate on the date of accident, I find appellant cannot take benefit of its own wrong, as the vehicle in question was insured by appellant despite Registration Certificate of the vehicle having lapsed.

7. It has come in evidence that the deceased was a bachelor and the claimant is father of deceased. Even if the claimant has not said in so many words that he was dependent upon his son, yet it would not justify

denying of compensation to the claimant. The Tribunal has assessed the *"loss of dependency"* at ₹11,69,532/- but has erred in not granting compensation under this head and has rather chosen to grant partly compensation of ₹2,92,383/- under the head of *"loss of estate"*. In view of Supreme Court's decision in *Ranjana Prakash (Supra)*, without filing cross-objections, in an appeal filed by Insurer, compensation cannot be enhanced and so, reliance placed by respondent-claimant's counsel upon decision in *Ranjana Prakash (Supra)* is misplaced. In the circumstances of instant case, compensation granted by the Tribunal under the head of *"loss of estate"* is treated to be one under the head of *"loss of dependency"*.

8. In the light of aforesaid, this Court finds that no case for reduction of compensation is made out and in the absence of cross-objections, the compensation granted cannot be enhanced although it deserves to be enhanced. This appeal is accordingly dismissed. Accordingly, it is directed to forthwith release the amount of compensation to respondent-claimant in terms of impugned Award. Statutory deposit, if any, be refunded to appellant.

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

(SUNIL GAUR)
JUDGE

JULY 09, 2018
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