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

Date of Decision: July 16, 2018

+   **<u>MAC.APP. 178/2013</u>**

ICICI LOMBARD GENERAL INSURANCE

COMPANY LTD. .....Appellant

Through: Ms. Neerja Sachdeva, Advocate

versus

REKHA DEVI @ SHAKSHI & ORS. .....Respondents

Through: Mr. Pankaj Kumar, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

<u>JUDGMENT</u>
(ORAL)

1. Impugned Award of 3rd May, 2012 grants compensation of ₹9,74,260/- with interest @ 9% p.a. to respondents-claimants on account of death of one *Vijay Pal* aged 35 years in a vehicular accident on 22nd October, 2008.

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

> *"It is the case of the LRs of the deceased Sh. Vijay Pal that on 22.10.2008 the deceased alongwith Sh. Neetu s/o Sh. Raghuraj Singh was coming back to Delhi from Gandhidham, Gujarat, in vehicle No. HR-69A-1061 (truck), loaded by salt, via High Way Road, Radhanpur, Distt. Patan, Gujarat. The truck was being driven by Sh. Neetu carefully and vigilantly and at about 6.00 am when his vehicle i.e.*

truck bearing no. HR-69A-1061 reached near Ramdev Chaudhary Hotel, Highway Road, Radhanpur, Distt. Patan, Gujarat, then all of sudden the offending vehicle no. GJ-12Z-0921 (tanker) being driven by its driver respondent no. 1 with a high speed, rashly, negligently, violating the traffic rules, zig-zag manner and without indication applied the brakes, it was ahead of the deceased. Due to this impact, the front portion of vehicle No. HR-69A-1061 (truck) hit into the back of offending vehicle No. GJ-12Z-0921 (tanker) and the deceased sustained fatal injuries. The deceased was taken to C.H.C. Radhanpur (Civil Hospital), Distt. Patan, Gujarat in precarious condition, by the police, where he was declared brought dead due to the injuries sustained in the accident in question. A criminal case under section 279/337/304-A IPC was registered against respondent no. 1 vide FIR No. 175/08 in police station Radhanpur, Distt. Patan, Gujarat. It is further stated that the accident took place due to rash and negligent driving on the part of respondent no. 1 of offending vehicle bearing no. GJ-12Z-0921 (tanker)."

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 dependency	:	₹7,39,260/-
2.) Funeral charges	:	₹10,000/-
3.) Loss of estate	:	₹75,000/-
4.) Loss of Consortium	:	₹50,000/-
5.) Loss of love and affection etc.	:	₹1,00,000/-
Total	:	₹9,74,260/-

4. The challenge to impugned Award by learned counsel for appellant-Insurer is on the ground that there is no endorsement on the driving licence in question that the driver is permitted to drive vehicle

carrying dangerous/hazardous goods and so, recovery rights ought to be granted to the Insurer. Learned counsel for appellant-Insurer further submits that compensation granted under the *“non-pecuniary heads”* ought to be suitably reduced in light of Supreme Court’s Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680. Learned counsel for appellant-Insurer submits that the Tribunal has erred in awarding the lawyer’s fee and out of pocket expenses, as there is no provision in the *Motor Vehicle Act, 1988* to award the costs. So, it is submitted that the impugned Award ought to be accordingly modified.

5. On the contrary, supports the impugned Award and submits that the compensation awarded is just and fair. So, it is submitted by learned counsel for respondents that this appeal deserves to be dismissed.

6. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that the Verification Report *(Ex. R3W1/5*) issued by the concerned Licencing Authority in respect of the driving licence in question does not carry any endorsement regarding authorization to drive vehicle carrying hazardous goods like oil, etc. It is relevant to note that appellant had insured the vehicle in question i.e. oil tanker and the Insurance Policy stipulates that in the event of violation of any provision of the *Motor Vehicle Act, 1988* the policy becomes ineffective. As per sub-rule (5) of Rule 132 of the *Central Motor Vehicle Rules 1989*, it is duty of the owner to ensure that the driver of the vehicle carrying hazardous goods, holds a driving licence as stipulated in Rule 9.

7. Aforesaid Rule mandates that the driver of such vehicle possesses advance driving licence and training to drive vehicle carrying hazardous

goods. The driver and owner of the insured vehicle have neither contested before the Tribunal nor before this Court. Despite service of notice under Order 12 Rule 8 of CPC, the driver and owner of insured vehicle have not come forward to contest the case set up against them. In such a case, the Tribunal ought to have granted recovery rights to the appellant-Insurer against driver and owner of the insured vehicle in question.

8. While assessing *'loss of dependency',* addition towards *'future prospect'* ought to be 40% and not 50% as granted by the Tribunal. Since driving licence of the deceased is on record therefore, assessment of *'loss of dependency'* has to be on the minimum wages of a skilled worker. Accordingly, the *'loss of dependency'* is reassessed as under:

₹4,107 X 12 X 15 X 140/100 X 2/3= ₹6,89,976/-

9. The compensation granted by the Tribunal under the *'non pecuniary heads'*, needs to be brought in tune with Supreme Court's Constitution Bench decision in *Pranay Sethi (supra).* Accordingly, compensation granted by the Tribunal under the head of *'loss of love & affection'* is disallowed and the compensation granted under the head of *'loss of consortium'* is reduced from ₹50,000/- to ₹40,000/-, '*funeral expenses'* are however increased from ₹10,000/- to ₹15,000/- and the compensation under the head of '*loss of estate'* is reduced from ₹75,000/- to ₹15,000/-.

10. In light of the aforesaid, the compensation payable to respondents-claimants is reassessed as under:-

S.No.	Description	Amount
1.	Loss of Dependency	₹6,89,976/-
2.	Loss of Consortium	₹40,000/-
3.	Funeral Expenses	₹15,000/-
4.	Loss of Estate	₹15,000/-
	Total	₹7,59,976/-
	Less (interim compensation paid)	₹50,000/-
		₹7,09,976/-

11. Consequentially, the compensation awarded stands reduced from ₹9,74,260/- to ₹7,59,976/-. In view of Section 172 of the *Motor Vehicle Act 1988*, the counsel's fee and out of pocket expenses awarded are converted towards the costs. Statutory deposit and the excess deposit, be refunded to appellant-Insurer.

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

(SUNIL GAUR)
JUDGE

JULY 16, 2018
v