

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

Date of Decision: July 03, 2018

+ MAC.APP.75/2013

THE NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Mr. Sameer Nandwani, Advocate

Versus

BIBI MARIAM & ORS. Respondents

Through: Mr. Nikhil Tripathi, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. Impugned Award of 8th October, 2012 grants compensation of ₹8,19,900/- with interest @ 9% p.a. to respondents-claimants on account of death of one Mohd. Shamim Alam in a vehicular accident on 22nd July, 2009.

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

“Adumbrated in brief, the facts leading to the above stated petitions are that on 22.07.09 the deceased and the petitioners namely Naresh and Shyama Devi were in the grocery shop of the petitioner Dhani Ram at Kuli Camp, Vasant Vihar. At about 7.30 PM a Tempo bearing no. DL 1L G 6418 being driven by respondent no.1 in a manner so rash and negligent came at a high speed and climbed on the footpath near the red light of Priya Cinema. It then hit the jhuggi in which the petitioners/deceased were sitting. All of them sustained injuries including respondent no.1. PCR Van

came on the spot and took all the injured persons to Trauma Centre, AIIMS where their MLCs were prepared. A case was registered vide FIR 230/09 at the police station Vasant Vihar on the statement of Shyam Singh. Mohd. Shamim could not survive and died on 22.07.09. His postmortem was conducted where his cause of death was opined as Comma due to head injury caused by blunt force possible in road traffic accident. He was survived by his wife Bibi Mariam, three minor sons and old aged parents, who were financially and emotionally dependant on him. He was 38 years of age and a Mason by profession. Shyama Devi, Dhani Ram and Naresh sustained simple injuries. They were discharged on the same day of accident. Due to the injuries they could not go to their place of work for about three months. Respondent no.2 was the owner of the Tempo and it was insured with respondent no.3.”

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	:	₹7,64,900/-
2) Loss of Love & Affection	:	₹25,000/-
3) Funeral expenses	:	₹10,000/-
4) Loss of Estate	:	₹10,000/-
5) Loss of Consortium	:	₹10,000/-
		=====
Total	:	₹8,19,900/-
Less (interim compensation awarded vide order dated 29.10.2010)	:	₹50,000/-
		=====
	:	₹7,69,900/-
		=====

4. The challenge to impugned Award by learned counsel for appellant-Insurer is on the ground that as per evidence of *R/W1-Deputy*

Manager of appellant-Company, driver of the insured vehicle in question was possessing a fake driving licence. Learned counsel for appellant submits that there is no basis to conclude that the deceased was a skilled person and so, while calculating compensation under the head “*loss of dependency*”, minimum wages of unskilled person ought to have been taken. Learned counsel for appellant-Insurer further submits that compensation granted under the “*non-pecuniary heads*” ought to be suitably reduced in light of decision of Constitution Bench of Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680.

5. On the contrary, learned counsel for respondents submits that deceased was aged 38 years and so, addition towards “*future prospects*” ought to be 40% in view of Supreme Court’s decision in *Pranay Sethi (Supra)* and that the Tribunal has rightly relied upon the evidence on record to conclude that deceased was a skilled person. 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 and the evidence on record, I find that apart from evidence of Deputy Manager of appellant-Company (*R1W1*), there is evidence of Record Clerk, RTO Office, Mathura, U.P. (*R2W2*), testifying that driving licence issued to the driver of vehicle in question was valid. In the face of evidence of *R2W2*, I find that the Tribunal has rightly relied upon it and has fastened the liability upon appellant to pay the compensation awarded. So far as the nature of employment of deceased is concerned, I find that there cannot be any documentary proof regarding deceased being a Mason and so, the

Tribunal has rightly assessed the “*loss of dependency*” while considering deceased to be a skilled person. Since no cross-objections have been filed, so addition towards future prospects cannot be made in appeal by the Insurer.

7. As regards compensation granted under the “*non pecuniary heads*”, it needs to be brought in tune with decision of Constitution Bench of Supreme Court in *Pranay Sethi (supra)*. Accordingly, compensation granted by the Tribunal under the head of “*loss of love & affection*” is disallowed. However, “*funeral expenses*” are increased from ₹10,000/- to ₹15,000/-. Similarly, compensation granted under the head “*loss of estate*” is also increased from ₹10,000/- to ₹15,000/- and compensation granted under the head “*loss of consortium*” is also increased from ₹10,000/- to ₹40,000/-.

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

S.No.	Description	Amount
1.	Loss of Dependency	₹7,64,900/-
2.	Loss of Consortium	₹40,000/-
3.	Funeral Expenses	₹15,000/-
4.	Loss of Estate	₹15,000/-
	Total	₹8,34,900/-
	Less (interim compensation awarded vide order dated 29.10.2010)	₹50,000/-
		₹7,84,900/-

9. Consequentially, impugned Award is accordingly modified. The compensation as per this judgment be deposited within four weeks by appellant-Insurer with the learned Tribunal. The re-assessed

compensation shall carry interest @ 9% per annum and it be disbursed in the ratio as indicated in the impugned Award. Statutory deposit, if any, be refunded to appellant-insurer.

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

(SUNIL GAUR)
JUDGE

JULY 03, 2018

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