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

Date of Decision: July 19, 2018

\+   MAC.APP. 155/2013

HDFC ERGO GENERAL INSURANCE COMPANY LTD.
..... Appellant
Through: Ms.Neerja Sachdeva, Advocate

Versus

SANTOSH & ORS. ..... Respondents
Through: Ms. Lipi Thapliyal, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

<u>JUDGMENT</u>
(ORAL)

1. Impugned Award of 30th July, 2012 grants compensation of ₹13,60,400/- with interest @ 9% p.a. to respondents-claimants on account of death of one- *Avdesh Singh,* aged 35 years in a vehicular accident on 17th June, 2011.

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

> *"1. This is a case for claim of compensation on account of death of Avdesh Singh in the road traffic accident dated 17/06/2011 caused within the jurisdiction of PS Kashmere Gate, Delhi.*
>
> *2. Petitioners' case is that on the day of accident when deceased was on the central divider foothpath ring Road, near Nigam Bodh Ghat, Delhi, vehicle no. DL 3CAG 4325 (offending vehicle) driven by respondent no. 1*

in rash and negligent manner struck against the deceased and other persons and thereafter, hit against a Truck standing on the other side of the Ring Road causing grievous injuries to the deceased. Deceased was taken to hospital where during course of treatment he succumbed to his injuries. FIR was lodged and postmortem was conducted."

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	:	₹13,10,400/-
2.) Love and affection	:	₹25,000/-
3.) Funeral expenses	:	₹5,000/-
4.) Loss of Consortium	:	₹10,000/-
5.) Loss of estate	:	₹10,000/-
Total	:	₹13,60,400/-

4. The challenge to impugned Award by learned counsel for appellant-*Insurer* is on the ground that the *'Insurance Cover Note'* and the Policy relied upon by the Tribunal was fake and the cheque issued to obtain the *'Insurance Cover Note'* was dishonoured and so, the liability to pay the compensation is not of the Insurer but of the driver and owner of the offending vehicle. To submit so, counsel for appellant-*Insurer* has drawn attention of this Court to evidence of owner *(DW-2)* of the offending vehicle to point out that as per this witness, the cheque issued by him to obtain *'Insurance Cover Note'* was misplaced by the agent and so, the premium amount was paid in cash and thereafter, the agent had delivered the *'Insurance Cover Note'* as well as *Insurance Policy* to him. It is submitted by counsel for Insurer that the vehicle in question was later

on insured for the period which does not cover the date of accident and even the said Policy was cancelled because the cheque issued towards the premium, was dishonoured. It is next submitted by counsel for Insurer that the Tribunal has erred in calculating *"loss of dependency"* by applying the minimum wages of a skilled person and infact, minimum wages of an unskilled person ought to be the basis of calculating the *"loss of dependency"*. It is further submitted by counsel for Insurer that on the day of accident, minimum wages payable to an unskilled person were ₹6,084/- per month. Thus, it is submitted that appellant-*Insurer* be absolved of the liability to pay the awarded compensation.

5. On the contrary, learned counsel for respondent-*Claimants* supports the impugned Award and submits that liability to pay compensation has been rightly put upon appellant-*Insurer* and the compensation awarded is required to be brought in tune with Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680.

6. Upon hearing and on perusal of impugned Award and evidence on record and the decision cited, I find that Insurance Policy *(EX.DW-2/X1)* was valid from 14th June, 2011 upto 13th June, 2012 and was valid on the day of accident. As per Endorsement *(Ex. DW2/RX-3)*, the aforesaid Insurance Policy *(EX.DW-2/X1)* was cancelled on 17th November, 2011. Meaning thereby, the aforesaid Insurance Policy on the day of accident was valid. The plea of Insurer that this Insurance Policy *(EX.DW-2/X1)* was not issued by the Insurer cannot be accepted for the reason that neither Agent- *Adarsh Lakhotia* has been examined by the Insurer nor it is evident that any action was taken against him by the Insurer. In view

thereof, I find no substance in appellant's plea of Insurance Policy in question being fake. There is no basis to assert so. In the considered opinion of this Court, there is no valid ground to absolve appellant – *Insurer* from the liability to pay the compensation awarded.

7. As regards assessment of *"loss of dependency"* is concerned, I find that the Tribunal has erred in applying the minimum wages of a skilled person, as there is no documentary proof on record regarding the deceased being a qualified Electrician. Therefore, the minimum wages of an unskilled person ought to have been applied. At the relevant time, the minimum wages payable to an unskilled person were ₹6,084/- p.m.

8. Supreme Court in *Reshma Kumari & Ors. v. Madan Mohan & Anr.,* (2013) 9 SCC 65 has reiterated that it is the obligation of the Court to ensure that the compensation granted is just, fair and proper. In view of Supreme Court's decision in *Pranay Sethi (supra)*, addition towards *"future prospects"* ought to be 40% and not 30%, as awarded by the Tribunal. Accordingly, the *"loss of dependency"* is re-assessed as under :-

₹6,084/- X 12 X 16 X 140/100 X 3/4 = ₹12,26,534/-

9. So far as compensation granted under the *'non pecuniary heads'* is concerned, it needs to be brought in tune with Constitution Bench decision of Supreme Court in *Pranay Sethi (supra).* Accordingly, compensation granted by the Tribunal under the head of *"loss of love & affection"* is disallowed. The *"funeral expenses"* are increased from ₹5,000/- to ₹15,000/-; *"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/-.

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

S.No.	Description	Amount
1.	Loss of Dependency	₹12,26,534/-
2.	Loss of Consortium	₹40,000/-
3.	Funeral Expenses	₹15,000/-
4.	Loss of Estate	₹15,000/-
	Total	₹12,96,534/-

11. Consequentially, total compensation payable to Claimants is reduced from ₹13,60,400/- to ₹12,96,534/-. A Three Judge Bench of Supreme Court in a recent decision of *Jagdish v. Mohan and Others,* (2018) 4 SCC 571 has granted interest @ 9% *per annum* on the awarded compensation and so, interest @ 9% *per annum* is maintained. The modified compensation be released forthwith to respondent-claimants in terms of impugned Award. Statutory deposit alongwith excess deposit be refunded to appellant-*Insurer*.

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

(SUNIL GAUR)
JUDGE

JULY 19, 2018
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