* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: August 20, 2018

\+ **MAC.APP. 228/2013**

JAGJEET SINGH ..... Appellant

Through: Mr. Suvesh Sharma, Advocate with appellant in person

Versus

UNITED INDIA INSURANCE CO. LTD. & ORS. .. Respondents

Through: Mr. Sameer Nandwani, Advocate

\+ **MAC.APP. 804/2014**

SH RAMESH CHANDRA SHARMA & ANR. ..... Appellants

Through: Nemo.

Versus

UNITED INDIA INSURANCE LTD & ORS. ..... Respondents

Through: Mr. Sameer Nandwani, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned two appeals are directed against Award of 30th November, 2012 vide which compensation of ₹11,83,400/- with interest @ 7.5% per annum has been awarded to Claimants. In the above captioned first appeal, Owner of the insured vehicle seeks exoneration from paying the awarded compensation, whereas in the above captioned

second appeal, enhancement of compensation is sought by Claimants. Since these two appeals arise out of common Award of 30th November, 2012, therefore, both these appeals have been heard together and are being decided by this common judgment. The facts as noted in opening paragraphs of the impugned Award are as under:-

> *"The present claim petition u/s166 and 140 Motor Vehicles Act, 1988 has been filed by petitioners for claiming compensation for Rs.1,00,00,000/- on account of death of Sh. Manoj Sharma in an accident which took place on 22.08.2007, at about 11.10 am. On the fateful day, he was driving his motorcycle bearing registration No.UP-14AH-5505 and when he reached at Ring Road near Subway Andrews Ganj New Delhi, suddenly a water tanker bearing registration no. HR-38G-1003 being driven by its driver in rash and negligent manner came and hit the motorcycle, as result victim sustained fatal injuries. An FIR no. 494/2007 with Police Station Defence Colony was registered against its driver namely Sunil Kumar."*

2. The Motor Accident Claims Tribunal (hereinafter referred to as 'the Tribunal') has relied upon evidence of mother (PW-1) of deceased *Manoj Sharma,* who had died in the vehicular accident on 22nd August, 2007 and the other evidence on record to award the compensation as noted hereinabove. Deceased *Manoj Sharma* was aged 25 years on the day of this vehicular accident and as per the evidence of mother (PW-1), deceased was working as a Software Engineer and was earning ₹14,500/-

per month. The Tribunal has calculated the *'loss of dependency'* by adding 20% towards future prospects and since deceased was unmarried, one-half has been deducted towards personal expenses of the deceased and by applying the multiplier of 11, the loss of dependency has been assessed at ₹11,48,400/-. Compensation of ₹20,000/- has been awarded under the head of '*loss of love and affection*' and '*Funeral Expenses*' of ₹15,000/- have been granted by the Tribunal. The break-up of compensation awarded by the Tribunal is as under:-

Loss of dependency	₹11,48,400/-
On account of Love and Affection	₹20,000/-
Funeral expenses	₹15,000/-
Total	₹11,83,400/-

3. The challenge to the impugned Award by learned counsel for Owner of the insured vehicle is on the ground that the Tribunal has erroneously granted recovery rights to respondent-Insurer. To submit so, attention of this Court is drawn to Section 66 of the *Motor Vehicles Act, 1988* and additional evidence of Owner of the insured vehicle as also evidence of *Rampal (*AW-2*)* and *Dinesh Rawat (AW-3)* to submit that insured vehicle was granted contract for watering of plants by Delhi Government and in the face of additional evidence led, no permit is required for plying the insured vehicle and so, the liability to pay the compensation is of the Insurer and not of the Owner of the insured vehicle.

4. On the other hand, learned counsel for Claimants seeks enhancement of compensation on the ground that as per Appointment

Letter *(Ex. PW3/B)*, annual emoluments of deceased were ₹1,74,000/- *per annum* and the potential income of deceased was ₹3,48,000/- *per annum* after completion of period of probation. It is next submitted by counsel for Claimants that the Tribunal has erred in applying the multiplier as per the age of Claimants, whereas in view of Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680, the applicable multiplier has to be as per the age of deceased. Lastly, counsel for Claimants submits that in view of Supreme Court's Constitution Bench decision in *Pranay Sethi (Supra)*, compensation under the head *"loss of estate"* ought to be granted to Claimants. So, it is submitted that the compensation granted be suitably enhanced.

5. Counsel for Insurer supports the impugned Award and submits that the Tribunal has rightly granted recovery rights to Insurer and no case for enhancement of compensation is made out.

6. Upon hearing and on perusal of impugned Award, evidence/ additional evidence on record and the decision cited, I find that the insured vehicle was plying for the purpose of watering of plants and for conservancy purpose in pursuance of contract awarded to the owner of insured vehicle and so, in view of Sub-Section 3(b) of Section 66 of the *Motor Vehicle Act, 1988*, the requirement of obtaining permit is dispensed with. In the light of additional evidence on record, the grant of recovery rights to Insurer cannot be sustained and the impugned Award is accordingly modified while putting the liability on the Insurer to pay the awarded compensation.

7. As regard quantum of compensation granted, I find that the Tribunal has rightly assessed the income of deceased at ₹1,74,000/- *per annum* on the basis of Appointment Letter *(EX.PW3/B)* but has failed to take note of the fact that the gross salary payable to the deceased after completion of period of probation was ₹3,48,000/- *per annum*. In view of Supreme Court's Constitution Bench decision in *Pranay Sethi (Supra)*, I find that addition towards *"future prospects"* ought to be 50% instead of 20% and the age of deceased should be the basis for applying the appropriate multiplier and so, in the instant case, multiplier of 18 is applied as the deceased was aged 25 years on the day of the accident. Since the deceased was unmarried, deduction of one half towards *"personal expenses"* has to be made. Accordingly, the *"loss of dependency"* is reassessed as under:-

₹1,74,000/- X 150/100 X 50/100 X 18 = ₹23,49,000/-

8. The compensation granted by 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 head of '*Loss of Love and Affection*' is disallowed. However, compensation of ₹15,000/- is granted under the head *"Loss of estate"*.

9. Accordingly, the compensation payable to Claimants is reassessed as under:-

1.	Loss of Dependency	₹23,49,000/-
3.	Funeral Expenses	₹15,000/-
4.	Loss of Estate	₹15,000/-
	Total	₹23,79,000/-

10. In light of the aforesaid, compensation granted by the Tribunal is enhanced from ₹11,83,400/- to ₹23,79,000/-. As far as interest granted by the Tribunal is concerned, 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, in the instant case, rate of interest of 7.5% *per annum* awarded by the Tribunal is enhanced and it is directed that the re-assessed compensation shall carry interest @ 9% *per annum*. The ratio and mode of disbursement of the compensation shall be as per the impugned Award. Registry is directed to refund the statutory deposit as per rules subject to deposit of enhanced compensation by the Insurer within six weeks. The deposit of ₹6,00,000/- made by the Owner of the insured vehicle be refunded to him alongwith interest accrued thereupon.

11. With aforesaid directions, the above captioned two appeals are disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 20, 2018
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