

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

Date of Decision: August, 10, 2018

+ **MAC.APP. 738/2017 & C.M. No. 29703/2017**

ICICI LOMBARD GENERAL INSURANCE
CO LTD

..... Appellant

Through: Mr. Navneet Kumar, Advocate

versus

PRABHABATI DEVI & ORS.

.....Respondents

Through: Mr. Anshuman Bal, Advocate

+ **MAC.APP. 449/2018**

PRABHABATI DEVI & ORS.

.....Appellants

Through: Mr. Anshuman Bal, Advocate

versus

ICICI LOMBARD GEN INSURANCE
CO LTD & ORS

.....Respondents

Through: Mr. Navneet Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above-captioned two cross appeals are directed against impugned Award of 19th April, 2017 vide which compensation of ₹31,03,624/- with interest @ 9% *per annum* has been awarded to Claimants on account of death of a bank peon/attendant-*Chander Kumar*,

aged 55 years. The above-captioned first appeal is by the Insurer to seek exoneration from paying compensation granted, whereas in the above-captioned second appeal, Claimants seek enhancement in the quantum of compensation granted by the Tribunal. Since these two appeals arise out of common Award, therefore, both the appeals have been heard together and are being decided by this common judgment.

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

“Brief facts of the case are that on 17.10.2015 at about 10.00 AM, deceased alongwith Damanpreet Singh, Anish Sharma, Rahul and Vaibhav were going in car bearing registration No. DL-6CN-4727 which was driven by respondent No. 1 in a rash and negligent manner. When the car reached on GT Road Jalwehra Village, National Highway, it hit against a truck from behind due to high speed. After the accident, occupants of car were taken to hospital. Deceased Chander Kumar @ Chander Kumar Upadhyay was taken to PGI, Chandigarh where he died on the date of accident itself.”

3. The Motor Accident Claims Tribunal (hereinafter referred to as ‘the Tribunal’) has calculated the loss of dependency while taking income of deceased at ₹28,973.40/- (rounded off to ₹28,975/-). No addition towards ‘future prospects’ has been made and one-fourth has been deducted towards the ‘personal expenses’ of deceased and by applying the multiplier of 11, the ‘loss of dependency’ has been assessed at

₹28,68,624/-. Compensation of ₹1,00,000/- has been awarded under the head of '*Love and Affection*' and '*Funeral Expenses*' of ₹25,000/- have been granted by the Tribunal. Under the head '*Loss of Estate*' compensation of ₹10,000/- has been granted. The break-up of compensation awarded by the Tribunal is as under:-

<i>Loss of dependency</i>	: ₹28,68,624 /-
<i>Loss of love and affection</i>	: ₹1,00,000/-
<i>Funeral expenses</i>	: ₹25,000/-
<i>Loss of Estate</i>	: ₹10,000/-
<i>Loss of Consortium</i>	: ₹1,00,000/-
<u>Total</u>	<u>: ₹31,03,624/-</u>

4. The challenge to impugned Award by learned counsel for Insurer is on the ground that negligence of driver of the insured vehicle does not stand proved. So, it is submitted that the claim petition of *Claimants* ought to be dismissed.

5. On the contrary, learned counsel for *Claimants* supports the impugned Award and submits that the compensation granted by the Tribunal is inadequate and it needs to be suitably enhanced in view of Salary Slip (*Ex. PW2/1*). It is further submitted that addition towards "*future prospects*" has to be 15% in view of Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* 2017 SCC OnLine SC 1270. So, it is submitted that the compensation granted by the Tribunal ought to be reasonably enhanced.

6. Upon hearing and on perusal of impugned Award and the evidence on record and the decision cited, I find that this fatal accident was

witnessed by *Raju (PW-3)*, who in his evidence has not exactly stated as to how the accident took place. There is one line cross-examination of this witness (*PW-3*) regarding his not knowing anything about the accident. During the course of hearing, Insurer's counsel has sought to place reliance upon the copy of the FIR to point out that the offending vehicle i.e. truck had hit the insured car from the side, which resulted in happening of this accident.

7. On the negligence aspect, I find that FIR of this case was registered on the basis of the statement of the deceased and its perusal clearly reveals that the negligence was of the truck driver and not the driver of insured vehicle in question. There is nothing on record to controvert the contents of the FIR, whose authenticated copy is on record and so, there is no basis to absolve the Insurer from the liability to pay the awarded compensation. However, I find that the “*non pecuniary damages*” awarded to the legal heirs of the deceased has to be in consonance with Supreme Court's Constitution Bench decision in *Pranay Sethi (Supra)*. In the considered opinion of this Court, the Tribunal has erroneously computed the income of deceased on the basis of Basic Pay, HRA and DA. However, deduction of one-fourth towards personal expenses is rightly made by the Tribunal. Since the deceased was aged about 55 years, therefore, addition towards ‘*future prospects*’ has to be 15%. In view of Supreme Court's Constitution Bench decision in *Pranay Sethi (Supra)*, the Tribunal has erred in not granting it. The deceased was a regular employee of Syndicate Bank and as per Salary Slip (*Ex. PW2/1*), his gross salary was ₹36,689.20/- (rounded of to ₹36,690/-). In view of Supreme Court's Constitution Bench decision in *Pranay Sethi (Supra)*,

the actual salary should be read as actual salary less tax. As per relevant ITR (*Ex. PW1/1 colly.*), no tax was payable on the income of deceased. Accordingly, the “*loss of dependency*” is reassessed as under:

$$₹36,690/- \times 12 \times \frac{3}{4} \times 11 \times \frac{115}{100} = ₹41,77,156/-$$

8. As regards compensation granted under the “*non pecuniary heads*”, it 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 and affection*” is disallowed. “*Funeral expenses*” are reduced from ₹25,000/- to ₹15,000/-. However, compensation granted under the head “*loss of estate*” is increased from ₹10,000/- to ₹15,000/- whereas compensation granted under the head “*loss of consortium*” is reduced from ₹1,00,000/- to ₹40,000/-. In view thereof, compensation payable to legal heirs of deceased-*Chander Kumar* is reassessed as under: -

Loss of dependency	:	₹41,77,156/-
Funeral expenses	:	₹15,000/-
Loss of Estate	:	₹15,000/-
Loss of Consortium	:	₹40,000/-
Total	:	₹42,47,156/-

9. In light of the aforesaid, compensation of ₹31,03,624/- granted by the Tribunal, is enhanced to ₹42,47,156/-, which shall carry interest @ 9% *per annum*. Registry is directed to refund the statutory deposit, if any, subject to Insurer depositing enhanced compensation with the Registrar General of this Court within six weeks and thereafter, the modified compensation be released to the Claimants in terms of the judgment, but in the same ratio and manner as indicated by the Tribunal

in the impugned Award.

10. With aforesaid directions, both the appeals and the pending application are accordingly disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 10, 2018

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