

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

Date of Decision: April 06, 2018

+ **MAC.APP. 342/2015 & CM 7590/2015**

M/S. ICICI LOMBARD GENERAL INSURANCE COMPANY
LTD.Appellant

Through: Mr. Ankit Kalra, Advocate

versus

LAKSHMI JUNEJA & ORS.Respondents

Through: Mr. Madhav Khosla, Advocate

Mr. Deepak Pandey, Advocate

+ **MAC.APP. 359/2015**

M/S. ICICI LOMBARD GENERAL INSURANCE COMPANY
LTD.Appellant

Through: Mr. Ankit Kalra, Advocate

versus

LAKSHMI JUNEJA & ORS.Respondents

Through: Mr. Deepak Pandey, Advocate

+ **MAC.APP.374/2015**

LAXMI JUNEJA & ORS.Appellants

Through: Mr. Deepak Pandey, Advocate

versus

KRISHAN PAL & ORS (ICICI LOMBARD GENERAL
INSURANCE CO LTD)Respondent

Through: Mr. Ankit Kalra, Advocate

+ **MAC.APP. 416/2015**

LAKSHMI JUNEJAAppellant

Through: Mr. Deepak Pandey, Advocate

versus

KRISHAN PAL & ORS (ICICI LOMBARD GENERAL
INSURANCE COMPANY LTD)Respondents

Through: Mr. Ankit Kalra, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. With the consent of learned counsel for the parties, the above captioned four appeals have been heard together and are being decided by this common order.
2. The above captioned four appeals relate to an Award of 17.1.2015 vide which compensation of ₹ 91,52,000/- has been granted to the legal Heirs of Raj Mohan Singh Juneja, aged 47 years, who had died in a vehicular accident on 12.3.2010. In this accident, Laxmi Juneja who is one of the legal heirs of late Raj Mohan Singh Juneja had sustained grievous injuries and the award in question grants compensation of ₹ 2,48,100/- to her on account of the injuries sustained by her in this accident. The awarded compensation carries interest @ 9% per annum and appellant had been held liable to pay the awarded compensation in the manner indicated in the Award.
3. The above captioned first two appeals are by the Insurer who seeks reduction in the quantum of compensation granted and the third Appeal is by the legal heirs of the deceased seeking enhancement of compensation and in the fourth appeal, the Injured wife of the deceased, seeks enhancement of compensation granted to her on account of injuries sustained by her in this accident.
4. The factual details already find mention in the Award and so, need

no reproduction. Suffice to note that the deceased was self-employed and the Motor Accident Claim Tribunal (*hereinafter referred to as the 'Tribunal'*), in the Award has relied upon the evidence recorded to conclude that the liability is of appellant-Insurer to pay the compensation. While taking the income of the deceased to be ₹ 7,03,505/- and after adding 30% towards future prospects, the loss of income has been assessed at ₹ 9,14,556/-.

5. While taking note that the deceased was survived by his wife, two minor daughters and aged father, after deducting 1/4th towards personal expenses and by applying the multiplier of 13, the loss of dependency has been assessed at ₹ 89,17,000/-. Compensation of ₹ 1 lac under the head of '*loss of love and affection*' and further compensation of ₹ 1 lac under the head of '*loss of consortium*' and ₹ 10,000/- under the head of '*loss of estate*' has been granted to the legal heirs of the deceased. '*Funeral expenses*' of ₹25,000/- has also been awarded. The break-up of the compensation granted to the legal heirs of the deceased by the Tribunal is as under :-

LOSS OF DEPENDENCY	= ₹ 89,17,000/-
LOSS OF LOVE AND AFFECTION	= ₹ 1,00,000/-
LOSS OF CONSORTIUM	= ₹ 1,00,000/-
FUNERAL EXPENSES	= ₹ 25,000/-
LOSS OF ESTATE	= ₹ 10,000/-
TOTAL	= ₹ 91,52,000/-

6. On the basis of the documentary evidence led by the injured – Laxmi Juneja, medical expenses of ₹ 18,900/- has been granted to

her. Future expenses of ₹ 1 lac has been awarded to injured – Ms. Laxmi Juneja to enable her to undergo physiotherapy, as disability in the form of limitation to long working and walking is likely to persist.

7. Compensation of ₹ 50,000/- has been granted to Injured– Ms. Laxmi Juneja under the head of '*pain and suffering and enjoyment of life*'. A sum of ₹ 30,000/- has been awarded to her towards '*special diet, conveyance and attendant charges*'. On account of the injuries sustained by Ms. Laxmi Juneja, '*loss of income*' during the period of treatment has been assessed at ₹ 49,200/-. The break-up of the compensation granted to Injured – Ms. Laxmi Juneja by the Tribunal is as under :-

<i>Medical Expenses</i>	: ₹ 18,900/-
<i>Physiotherapy</i>	: ₹ 1,00,000/-
<i>Pain, sufferings & Enjoyment of Life</i>	: ₹. 50,000/-
<i>Special Diet, Attendant & Conveyance Charges</i>	: ₹ 30,000/-
<i>Loss of Income</i>	: ₹ 49,200/-
<i>TOTAL</i>	: ₹ 2,48,100/-

8. The challenge to Award of 17.1.2015 by learned counsel of Insurer is on the ground that there was contributory negligence of deceased in causing the accident in question to the extent of 50%. To assert so, attention of this Court is drawn to the evidence of Kishan Pal, who was driving the insured vehicle at the time of this accident. According to the learned counsel for Insurer, the insured vehicle was stationery on the side of the road and the vehicle driven by deceased had hit against it, in the night intervening 11th and 12th

March, 2010 and so, the quantum of compensation granted needs to be suitably reduced.

9. It is next submitted by learned counsel for Insurer that Injured—*Ms. Laxmi Juneja* in her evidence has admitted that she was filing the income tax returns, which indicates that she was earning and so, the deduction towards personal expenses of the deceased ought to have been 1/3rd and not 1/4th. Learned counsel for the Insurer submits that the Tribunal has erred in not granting the recovery rights as it is evident from the Driving Licence of driver of the insured vehicle that he was not authorised to drive in the National Capital Territory (NCT).
10. Regarding grant of non-pecuniary damages, it is submitted by learned counsel for Insurer that it needs to be in tune with Supreme Court's decision in *National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.* 2017 SCC OnLine SC 1270. It is also submitted by learned counsel for Insurer that the appeals filed by the legal heirs of the deceased and the injured ought to be out-rightly dismissed as no case for enhancement of compensation is made out and rather, the compensation awarded needs to be suitably reduced.
11. On the contrary, learned counsel for the driver of the insured vehicle submits that the driving licence which was in possession of the driver was valid as the concerned officer has not put his signatures below the remark "***Driving Licence not valid in the NCT***". To submit so, the attention of this Court is drawn to the evidence of witness – R3W2 from the Regional Transport Officer –

Meerut.

12. Learned counsel for the Claimants submits that the material witnesses i.e. the driver of the insured vehicle, has not been cross-examined on the contributory negligence aspect and that the injured was not having any steady income and she was a housewife and so deduction of 1/4th towards personal expenses has been rightly weighed.
13. To seek enhancement of compensation, learned counsel for the Claimants submits that the quantum of compensation granted is on the lower side and needs to be suitably enhanced. According to the learned counsel for the Claimants, the Tribunal has erred in not taking the income of the deceased at ₹ 1 lac odd per month and has erred in not taking into consideration the home loan of ₹ 94 lacs odd which was repayable in monthly instalments. So, it is submitted by claimant's counsel that the quantum of compensation granted needs to be suitably enhanced.
14. Upon hearing both the sides and on perusal of the Award in question, evidence on record and the decision cited, this Court finds that the plea of contributory negligence cannot be accepted because there is no effective cross-examination of the driver—*Kishan Pal* of the insured vehicle and in the face of evidence of the Injured. Regarding deduction of 1/3rd towards personal expenses, it transpires from the evidence on record that the Injured was not having any steady income and so deduction of 1/4th towards personal expenses has been rightly made by the Tribunal.

15. So far as the grant of recovery rights is concerned, I find that copy of the driving licence Ex- PW-1/3 of Kishan Pal, driver of the insured vehicle, bears a faint stamp of “*driving licence not valid in NCT of Delhi*” and below that stamp, attested is written, but the said statement of driving licence in question being not valid in NCT has not been signed by anybody. Therefore, no case for grant of recovery rights to the Insurer is made out.
16. Regarding the enhancement of quantum of compensation, I find that the Tribunal has assessed the income of deceased on the basis of the income as reflected in the Income Tax Return and rightly so, because a bald statement of the legal heirs of deceased regarding income of deceased being more than ₹ 1 lac cannot be accepted on the face of it. So far as the liability of the legal heirs of deceased regarding the payment of instalments of ₹ 97,000/- per month towards the home loan of ₹ 94 lacs odd is concerned, I find that Ms. Laxmi Juneja, wife of deceased has nowhere asserted in the evidence that the home loan amount was paid by the deceased till the date of accident and so, on this account, the quantum of compensation granted cannot be enhanced.
17. As regards the grant of compensation under the non-pecuniary heads is concerned, I find that the Tribunal has granted compensation of ₹ 2,35,000/- under this head but in light of Supreme Court decision in Pranay Sethi (Supra), it needs to be reduced to ₹ 70,000/-.
18. In view of the dictum of Supreme Court in Pranay Sethi’s case

(Supra), the addition towards future prospects is reduced from 30% to 25% and the quantum of compensation under the head of '*loss of income*' is reduced from ₹ 9,14,556/- to ₹ 8,79,381.25, which is rounded off to ₹ 8,79,382/-. Applying the multiplier of 13, the '*loss of dependency*' is accordingly reduced from ₹ 89,17,000/- to ₹ 85,73,974/-.

19. In view of the above, the compensation granted to legal heirs of the deceased is re-assessed as under :-

Loss of dependency	:	₹85,73,974
Loss of consortium	:	₹40,000
Funeral expenses	:	₹15,000
Loss of estate	:	<u>₹15,000</u>
Total	:	<u>₹86,43,974</u>

So far as the compensation granted to the Injured- Ms. Laxmi Juneja is concerned, this Court finds that the compensation granted to her is on the lower side. This Court finds that the compensation of ₹ 50,000/- granted to her under the head of '*pain and suffering and enjoyment of life*' is inadequate and it is accordingly enhanced to ₹ 1 lac. Under the head of special diet, conveyance and attendant charges, compensation of ₹ 30,000/- has been granted which also appears to be on lower side. It is accordingly enhanced from ₹ 30,000/- to ₹ 50,000/-. The compensation granted to injured is thus re-assessed as under :-

Medical expenses	:	₹18,900
Physiotherapy	:	₹1,00,000
Pain, suffering & enjoyment of life	:	₹1,00,000

Special diet, attendant and conveyance	
Charges	: ₹50,000
Loss of income	: ₹49,200/-
Total	: ₹ 3,18,100/-

20. The re-assessed compensation shall carry the interest @ 9% per annum and it shall be disbursed in the manner as indicated in the award. The Insurer shall deposit the compensation in terms of this judgment within a period of six weeks with the Registry of this Court and it be disbursed to the Claimants in terms of this judgment and thereafter, the statutory deposit be refunded to the Insurer.
21. The above captioned four appeals are disposed of in the aforesaid terms.

(SUNIL GAUR)
JUDGE

APRIL 06, 2018
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