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

Date of decision: April 24, 2018

\+   **MAC.APP. 774/2014**

THE ORIENTAL INSURANCE CO LTD ..... Appellant
Through: Mr.A.K.Soni, Advocate

Versus

SHAMA PARVEEN & ORS. ..... Respondents
Through: Mr. S.K. Jha, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Appellant is the Insurer of bus bearing No. DL-1PB-5035, which was involved in a vehicular accident on 29th November, 2010 and in the said accident, one *Mohd. Jahangir*, aged around 40 years *(as per Post Mortem Report)*, who was working as *rickshaw pullar*, had died. The Motor Accident Claims Tribunal *(hereinafter referred to as "the Tribunal")*, vide impugned Award of 11th July, 2014, has awarded compensation of ₹ 9,53,476.80/- to respondents-claimants along with interest @ 9% p.a. The facts, as noticed in the impugned Award, are as under:-

> *"Brief facts as epitomized in present petition are that on fateful day i.e. 29.11.2010 at about 08.05 pm, the driver of the offending vehicle bus bearing no. DL-1PB-5035 running his vehicle bus in a rashly and negligent manner on the road and when the driver*

reached at Bharat Nagar Bus Stop, the vehicle hit the victim, who had come there to board the bus, resultantly causing fatal injuries to victim. Driver of the bus run away from the spot. The victim was removed to AIIMS Hospital for treatment where he died. An FIR No. 280/2010 under section 279/337/304A IPC with police station New Friends Colony was registered for this accident against erring driver - first respondent namely Krishan Pal."

2. To render the impugned Award, the Tribunal has relied upon evidence of *Mohd. Chand,* son of deceased *(PW-2)*; *Jeet Singh Rana (PW-3)*, who has deposed regarding registration of criminal case with respect to accident in question; *Mahender Kumar (R2W1),* owner of the bus in question; *Raj Pal (R3W1),* Assistant Manager of appellant-Insurance Company and *S.D.Sharma*, Head Clerk, State Transport Authority, Rajpur Road *(R3W2)*, who has deposed regarding the permit issued in respect of bus in question.

3. On the strength of afore-referred evidence on record, impugned Award has been rendered. The Tribunal in the impugned Award has assessed the income of deceased as ₹6,861.4/- p.m. and has deducted 1/3rd towards *personal expenses* of deceased and addition of 30% towards *'future prospects'* has been made by the Tribunal and by applying multiplier of 14, loss of dependency has been assessed at ₹7,68,476/-. The breakup of compensation awarded by the Tribunal is as under:-

S.No.	Description	Amount
1.	Loss of Dependency	₹7,68,476/-
2.	Loss of Consortium	₹1,00,000/-
3.	Loss of Love & Affection	₹75,000/-

5.	Loss of Estate	₹10,000/-
	Total	₹9,53,476.80/-

4. The challenge to the impugned Award by learned counsel for appellant-Insurer is on the ground that there is no proof of negligence of driver of bus in question. It is pointed out that there is no eye witness of this accident and the Tribunal has relied upon the factum of registration of a criminal case regarding the accident in question whereas the driver of bus in question has been acquitted in the criminal case and so, finding of negligence is liable to be set aside.

5. On the quantum of compensation awarded, learned counsel for appellant-insurer has drawn attention of this Court to a copy of Ration Card *(EX PW1/A)* of deceased, which indicates that the deceased was aged 55 years on 25th September, 2010 and submits that in view of decision of Constitution Bench of Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* 2017 SCC OnLine SC 1270, addition towards future prospects has to be 10% and not 30%.

6. It is further submitted by counsel for appellant-insurer that appellant's wife and his widowed daughter were dependent upon him and so, deduction towards *'personal expenses'* of deceased ought to have been 50% and not 1/3rd. It is further submitted by appellant's counsel that as per evidence of *R3W2*-Head Clerk from concerned Transport Authority, the owner of the bus in question was not having a valid permit on the day of the accident and so, liability to pay compensation is of the owner of the bus and not of appellant-insurer. Thus, setting aside of impugned Award is sought. Nothing else is urged on behalf of appellant.

7. On the contrary, learned counsel for respondents-claimants supports the impugned Award and submits that the compensation awarded is just and proper.

8. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that acquittal in a criminal case has no bearing on the determination of negligence in proceedings like the instant one. A bare perusal of the site plan of the spot reveals that the negligence was of the bus driver. The result of criminal case is thus inconsequential. It is settled legal position that *de hors* acquittal of a driver in criminal case, the Tribunal is expected to make an independent inquiry to reach a conclusion as to whether negligence on the part of driver of the offending vehicle had been proved on the touchstone of preponderance of probability or not, rather than on proof of guilt beyond all reasonable doubt.

9. Regarding therebeing no valid permit of bus in question on the date of accident, I find that it has come in the cross-examination of *R3W2*-Head Clerk from Transport Authority that application for renewal of the permit was made on 27th October, 2010, but the renewal was done on 30th November, 2010. Since fee for renewal of permit was deposited by the owner of vehicle in question in time, therefore, benefit of non-renewal of permit will not accrue to the Insurer and thus, liability to pay the compensation would be of appellant-insurer and not of owner of vehicle in question.

10. Regarding addition of 30% towards future prospects, I find that reliance placed upon Post Mortem Report by the Tribunal is not justified, particularly when the Ration Card *(EX PW1/A)* on record reveals that on

the day of accident, deceased was aged more than 55 years. Therefore, addition of 30% towards *'future prospects'* is uncalled for and in view of decision of Supreme Court in *Pranay Sethi (Supra)*, addition of 10% towards *'future prospects'* is to be made.

11. So far as deduction of *'personal expenses'* is concerned, I find that there is no cross-examination of son of the deceased on this aspect. Therefore, the Tribunal has rightly deducted 1/3rd towards personal expenses. Since the deceased was aged 55 years, therefore, the applicable multiplier would be of 11 and not of 14, as applied by the Tribunal.

12. In the light of aforesaid, the *'loss of dependency'* is reassessed as under:-

₹5805.8 X 2/3 X 11 X 12= ₹5,10,910.40/-

13. As regards compensation 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 and compensation granted under the head of *'loss of consortium'* is reduced from ₹1,00,000/- to ₹40,000/-. Compensation under the head of *'loss of* estate' is enhanced from ₹10,000/- to ₹15,000/- and compensation of ₹15,000/- under the head of *'funeral expenses'* is also granted.

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

S.No.	Description	Amount
1.	Loss of Dependency	₹5,10,910/-
2.	Loss of Consortium	₹40,000/-
3.	Loss of Estate	₹15,000/-
5.	Loss of Funeral Expenses	₹15,000/-

		Total	₹5,80,910/-

Consequentially, the compensation amount payable stands reduced from ₹9,53,476.80/- to ₹5,80,910/-.

15. The re-assessed compensation shall carry interest @ 9% per annum and it shall be disbursed in the manner as indicated in the Award. The excess deposit with statutory deposit be refunded to appellant-insurer and re-assessed compensation be released forthwith to respondents-claimants.

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

(SUNIL GAUR)
JUDGE

APRIL 24, 2018
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