

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

Date of decision: April 10, 2018

+ **MAC.APP. 820/2014**

ASHOK KUMAR RAI

..... Appellant

Through: Mr. Pankaj K. Tripathi & Mr. K.K.
Tiwari, Advocate with appellant in person

Versus

VEERAMMAL & ORS.

..... Respondents

Through: Mr. Harbir Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 11th march, 2014 grants compensation of ₹3,74,025/- with interest @9% p.a. to respondents-claimants on account of death of one *Veera Swami*, aged 56 years, in a vehicular accident on 20th April, 2010. The facts, as noted in the impugned Award by learned Motor Accidents Claims Tribunal (*hereinafter referred to as the "Tribunal"*) are as under:-

"Brief facts of the case are that on 20.4.2010 at around 11.15 am deceased Veera Swami going for his duty, when reached at Gate no.1 I.P.Park, opposite Ring Road, Sarai Kale Khan, New Delhi offending motorcycle number DL-3S-AX-3220 driven by R1 in rash and negligent manner hit the deceased, due to which he received grievous injuries and thereafter removed to

AIIMS Trauma Centre by the police, however during treatment he died due to the injuries at AIIMS Trauma Centre on 24.04.2010.”

2. On the strength of evidence of appellant and wife of deceased, impugned Award has been rendered. The breakup of compensation awarded by the Tribunal is as under:-

S.No.	Description	Amount
1.	Loss of Dependency	₹1,39,725/-
2.	Loss of Love & Affection	₹1,00,000/-
3.	Funeral expenses	₹25,000/-
4.	Loss of Consortium	₹1,00,000/-
5.	Loss of Estate	₹10,000/-
	Total	₹3,74,725/-

3. The Tribunal in the impugned Award has assessed the income of deceased as ₹1,500/- p.m. and has deducted 1/4th towards *personal expenses* of deceased and addition of 15% towards '*future prospects*' has been made by the Tribunal and by applying multiplier of 09, loss of dependency has been assessed at ₹1,39,725/-/.

4. Appellant is the owner and driver of offending vehicle i.e. the motor cycle in question and since the motor cycle was not insured, therefore, appellant has been saddled with the liability to pay the awarded compensation. Learned counsel for appellant assails impugned Award on the ground that appellant's motor cycle was not involved in the accident in question and there was no eye witness of the accident in question. It is

submitted by appellant's counsel that appellant has been acquitted in the criminal case and so, negligence cannot be attributed to appellant. Attention of this Court is drawn to the site plan of the spot prepared in criminal proceedings to show that the motor cycle had struck against the pedestrian at Point-A, which is at a distance of 40 ft. from Point-B, where the motor cycle was found lying. So, it is submitted that the manner of taking place of this accident does not stand proved and infact, unidentified vehicle had caused the accident in question and so, appellant is not liable to pay the compensation awarded. It is also submitted by appellant's counsel that the quantum of compensation awarded is excessive in the facts of this case.

5. On the contrary, learned counsel for respondents-claimants controverts appellant's case and maintains that appellant's involvement in the accident in question is quite apparent from documents of the criminal case which are on record and are not rebutted by appellant. So, it is submitted that the impugned Award deserves to be maintained.

6. Upon hearing and on perusal of evidence on record and the impugned Award, I find that as per FIR registered in respect of accident in question, appellant's motor cycle was seized from the spot and since appellant was injured in this accident, therefore, he was also removed alongwith injured/deceased to hospital. The copy of Seizure Memo of appellant's motor cycle, which was damaged in this accident, is also on record. Mechanical Inspection Report of appellant's motor cycle, which was damaged in this accident, clearly indicates involvement of appellant's motor cycle in question. So, appellant is not justified in

asserting that his motor cycle was not involved in the accident in question. Merely because there is no eye witness of the accident in question, appellant cannot be absolved. Acquittal of appellant in the criminal proceedings is because the complainant did not give evidence in the criminal case.

7. A Coordinate Bench of this case in *Gurpal Singh Vs. Meenu & Ors.* 2016 SCC OnLine Del 1088 has reiterated that the standard of proof in the proceedings arising out of the liability in tort is to be decided on touchstone of preponderance of probabilities rather than on proof of guilt beyond all reasonable doubts. 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.

8. In the considered opinion of this Court, the negligence of appellant in causing the accident in question is probablised on the basis of the material on record. Reference to site plan of the spot by appellant's counsel is of no consequence because it is quite probable that after hitting the pedestrian on one side of the road, the motor cycle loses its control and is dragged or is found to be lying on other side of the road. So, on this ground, it cannot be said that the accident in question did not take place due to negligence of appellant.

9. So far as quantum of compensation granted is concerned, I find that "*loss of dependency*" has been rightly assessed by the Tribunal. However, the compensation granted under the non-pecuniary heads needs

to be brought in tune with decision of Constitution Bench of Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* 2017 SCC OnLine SC 1270. In view of the dictum in *Pranay Sethi (Supra)*, the compensation granted by the Tribunal under the head of 'loss of love & affection' is disallowed and compensation granted under the head 'loss of consortium' is reduced from ₹1,00,000/- to ₹40,000/-. The 'Funeral Expenses' is accordingly reduced from ₹25,000/- to ₹15,000/- but compensation granted under the head 'loss of estate' is enhanced from ₹10,000/- to ₹15,000/-.

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

S.No.	Description	Amount
1.	Loss of Dependency	₹1,39,725/-
2.	Loss of Consortium	₹40,000/-
3.	Loss of Estate	₹15,000/-
4.	Funeral expenses	₹15,000/-
	Total	₹2,09,725/-

Consequently, the compensation amount payable stands reduced from ₹3,74,725/- to ₹2,09,725/-.

11. The re-assessed compensation shall carry interest @ 9% per annum and it shall be disbursed in the manner as indicated in the Award. The appellant shall deposit the compensation in terms of this judgment within a period of six weeks with the Registry of this Court and thereafter, it be

disbursed to the claimants in terms of this judgment.

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

(SUNIL GAUR)
JUDGE

APRIL 10, 2018

r

