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

Date of Decision: July 16, 2018

\+ **MAC.APP.147/2013**

SHRIRAM GENERAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. Sameer Nandwani and Mr. Junaidullah, Advocates

Versus

RAJNI AND ORS. ..... Respondents

Through: Mr. Anshuman Bal, Advocate

\+ **MAC.APP.312/2016**

RAJNI ..... Appellant

Through: Mr. Anshuman Bal, Advocate

Versus

SHRIRAM GENERAL INSURANCE CO. LTD & ORS. ..... Respondents

Through: Mr. Sameer Nandwani and Mr. Junaidullah, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. In the above captioned first appeal, exoneration from liability to pay the compensation is sought by the Insurer, whereas in the above captioned second appeal, enhancement of compensation is sought by the Claimants. Since both the appeals arise out of common impugned judgment, therefore, with the consent of learned counsel for the parties, both the appeals have been heard together and are being decided by this common judgment.

2. Impugned Award of 26th July, 2012 grants compensation of

₹7,85,016/- with interest @ 9% p.a. to respondents-claimants on account of death of one Om Pal aged 19 years in a vehicular accident on 27th November, 2009.

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

> *"On 27.11.2009 at about 7:00 a.m., the deceased was going from Chhawla to Bijwasan on his Scooter and when he reached at Najafgarh Bijwasan Road, Baghera Mor, Delhi a bus bearing No. HR 55C-0360 came from the side of Chhawla at a very high speed and was being driven most rashly and negligently. This bus hit the scooter of the deceased from behind as a result of which the deceased fell down on the road and suffered fatal injuries."*

4. On the basis of evidence led, impugned Award has been rendered by Motor Accident Claims Tribunal *(henceforth referred to as "the Tribunal")* and the breakup of compensation awarded is as under:-

1.) Loss of dependency	:	₹7,40,016/-
2.) Loss of love and affection	:	₹25,000/-
3.) Funeral expenses	:	₹5,000/-
4.) Loss of Consortium	:	₹10,000/-
5.) Loss of Estate	:	₹ 5,000/-
Total	:	₹7,85,016/-

5. Learned counsel for the Insurer seeks exoneration by submitting that the Tribunal in the impugned Award has concluded that the driving licence in question was fake and instead of exonerating, recovery rights have been granted to the Insurer. A limited challenge to the impugned Award by Insurer's counsel is on the ground that in such a case, Insurer ought to have been exonerated from the liability to pay the compensation.

6. On the contrary, learned counsel for the Claimant refutes the aforesaid stand taken on behalf of the Insurer and submits that the quantum of compensation granted by the Tribunal is inadequate. Enhancement of compensation is sought by Claimant's counsel on ground that the Tribunal has erred in granting addition of 30% only towards future prospects and in view of Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680, addition towards future prospects ought to be 40%. Compensation under the *"non pecuniary heads"* is sought in terms of Supreme Court's decision in *Pranay Sethi (supra).*

7. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that instead of exoneration, the circumstances of this case justifies the grant of recovery rights to the appellant-Insurer as the Insurer can always pay the awarded compensation in the first instance and to recover it from owner and driver of the vehicle in question. In the instant case, the deceased was aged 19 years and the Tribunal has assessed the '*loss of dependency*' on the basis of minimum wages of a skilled worker and in such a case, addition towards future prospects has to be 40%. Accordingly, by adding 40% towards future prospects, the '*loss of dependency*' is re-assessed as under:-

$$₹\ 3{,}953/\text{-} \times 12 \times \frac{2}{3} \times \frac{140}{100} \times 18 = ₹\ 7{,}96{,}925/\text{-}\ \text{(rounded off)}$$

8. As regards compensation granted under the *'non pecuniary heads'*, compensation granted by the Tribunal under the head of *'loss of love and affection'* is disallowed. However, the compensation granted under the

head of *'loss of consortium'* is enhanced from ₹ 10,000/- to ₹ 40,000/-. The *'funeral expenses'* are also enhanced from ₹5,000/- to ₹15,000/- and the compensation under the head of *'loss of Estate'* is also enhanced from ₹5,000/- to ₹15,000/-.

9. In light of the aforesaid, the compensation payable to respondents-claimants is reassessed as under:-

S.No.	Description	Amount
1.	Loss of Dependency	₹7,96,925/-
2.	Loss of Consortium	₹40,000/-
3.	Funeral Expenses	₹15,000/-
4.	Loss of Estate	₹15,000/-
	Total	₹8,66,925/-
	Less (interim compensation awarded)	₹50,000/-
		₹8,16,925/-

10. In the light of aforesaid, total compensation payable to Claimants is enhanced from ₹ 7,85,016/- to ₹ 8,66,925/- which shall carry interest @ 9% per annum. The enhanced compensation with interest be deposited within six weeks by Insurer with the Registry and it be disbursed in the ratio and manner, as indicated in the impugned Award. Statutory deposit, if any, be refunded to Insurer.

11. With aforesaid directions, both these appeals are accordingly disposed of.

(SUNIL GAUR)
JUDGE

JULY 16, 2018
SRwt