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

Date of Decision: September 05, 2018

\+   **MAC.APP. 338/2013**

ORIENTAL INSURANCE COMPANY ..... Appellant
Through: Mr. Amit Gaur, Advocate for Mr.Pradeep Gaur, Advocate

Versus

MEENA DEVI AND ORS. ..... Respondents
Through: Mr. Anshuman Bal, Advocate

\+   **MAC.APP. 904/2014**

MEENA DEVI AND ORS. ..... Appellants
Through: Mr. Anshuman Bal, Advocate

Versus

ORIENTAL INSURANCE COMPANY ..... Respondent
Through: Mr. Amit Gaur, Advocate for Mr.Pradeep Gaur, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned two appeals are directed against Award of 21st January, 2013 vide which compensation of ₹7,02,773/- with interest @ 9% per annum has been awarded to Claimants. In the above captioned first appeal, *Oriental Insurance Company Limited (hereinafter referred to*

as Insurer) seeks reduction of quantum of compensation granted, whereas in the above captioned second appeal, enhancement of compensation is sought by Claimants. Since these two appeals arise out of common Award of 21st January, 2013, therefore, both these appeals have been heard together and are being decided by this common judgment. The facts as noted in opening paragraphs of the impugned Award are as under:-

> *"On the unfortunate day of 23.8.2010 at about 9.30 PM, the deceased alongwith Raju Jha were crossing the road at GTK Road, Opp. R.G. Farm House, Road towards Delhi near Budhpur, Delhi when a truck bearing No. HP 34B 5152 came from the side of Karnal at a high speed driven most rashly and negligently and hit the deceased as a result of which deceased died at the spot due to the injuries received in the accident. The accident caused to the rash and negligent driving by the driver/ respondent No.1 of the offending truck. The FIR was registered in respect of this accident vide FIR No. 287/10 at PS Alipur U/s 279/304A IPC."*

2. The Motor Accident Claims Tribunal *(hereinafter referred to as 'the Tribunal')* has relied upon the evidence of *Meena (PW-1),* wife of *Lal Babu,* who had died in a vehicular accident on 23rd August, 2010. The Tribunal has also relied upon the evidence of eye witness-*Raju Jha (PW-2)* and the other evidence on record to award the compensation as noted hereinabove. Deceased *Lal Babu*, aged 57 years on the day of this vehicular accident, was working as a Contractor and the Tribunal has assessed his income on the basis of minimum wages of an unskilled

labourer and has calculated *"loss of dependency"* by adding 30% towards *"future prospects"* and since deceased was married, 1/4th towards *"personal expenses"* of deceased has been deducted and by applying multiplier of 9, *"loss of dependency"* has been assessed at ₹5,55,773/-. The breakup of compensation awarded to legal heirs of deceased by the Tribunal is as under:-

1) Loss of dependency	:	₹5,55,773/-
2) Funeral expenses	:	₹7,000/-
3) Loss of Estate	:	₹10,000/-
4) Loss of Consortium	:	₹10,000/-
5) Loss of love, company and affection	:	₹1,00,000/-
6) Loss of gratuitous services	:	₹20,000/-
		₹7,02,773/-

3. The challenge to the impugned award by learned counsel for Insurer is on the ground that the Tribunal has erred in adding 30% towards *"future prospects"*, whereas addition of 10% towards *"future prospects"* ought to have been made. It is submitted by counsel for Insurer that wife of deceased alone was dependent upon him and so, deduction of 1/2 towards *"personal expenses"* of deceased ought to be made. To seek reduction of the compensation under the non-pecuniary heads, reliance is placed upon Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680. Thus, reduction in quantum of compensation granted is sought by counsel for Insurer.

4. On the contrary, learned counsel for the Claimants refutes the aforesaid stand taken on behalf of Insurer and submits that as per ration card *(Ex.PW1/5)*, age of deceased was 47 years on the day of accident. As

per post mortem report, age of deceased was 50 years on the day of this accident. So, it is submitted that applicable multiplier is of 13. It is also submitted that in view of Supreme Court's Constitution Bench decision in *Pranay Sethi (Supra)*, addition of 25% towards *"future prospects"* ought to be made. It is next submitted that deduction of 1/4th towards *"personal expenses"* has been rightly made by the Tribunal, as both sons, widow and mother of deceased were dependent upon him. Lastly, it is submitted that quantum of compensation granted to the Claimants ought to be enhanced.

5. Upon hearing and on perusal of impugned award, evidence on record and the decision cited, I find that as per copy of ration card *(Ex. PW1/5)*, the deceased was born in the year 1963 and so, on the day of accident, he was aged 47 years. Since the ration card *(Ex. PW1/5)* was made prior to the Voter's Identity Card, therefore, it ought to be relied upon. In view of Supreme Court's decision in *Pranay Sethi (Supra)*, addition of 25% towards *"future prospects"* ought to be made. It has come in the evidence that both the sons of deceased were dependent upon him and apart from them, his wife and mother of deceased were also dependent upon him and so, deduction of 1/4th towards personal expenses of deceased has been rightly made by the Tribunal.

6. The income of deceased has been calculated by the Tribunal on minimum wages payable to an unskilled labourer. The deceased was a Contractor and by no stretch of imagination, he can be put at par with an unskilled labourer. So, income of deceased is assessed on minimum wages payable to a skilled person. At the relevant time, the minimum

wages payable to a skilled workman were ₹6,448/- per month. The age of deceased was 47 years on the day of accident and so, multiplier of 13 has to be applied. Thus, the "*loss of dependency*" is re-assessed as under:-

₹6,448/- X 12 X 13 X 125/100 X 3/4 = ₹9,43,020/-

7. The compensation granted by Tribunal under the non-pecuniary heads need to be brought in tune with the Supreme Court's Constitution Bench decision in *Pranay Sethi (supra).* Accordingly, the compensation of ₹1,00,000/- granted by the Tribunal under the head of *"loss of love, company and affection etc."* is disallowed. Similarly, compensation of ₹20,000/- granted under the head *"loss of gratuitous services"* is also disallowed. However, *"funeral expenses"* are increased from ₹7,000/- to ₹15,000/- and compensation granted under the head *"loss of estate"* is also increased from ₹10,000/- to ₹15,000/-. Compensation granted under the head *"loss of consortium"* is also increased from ₹10,000/- to ₹40,000/-.

8. In light of the aforesaid, the compensation payable to legal heirs of deceased is reassessed as under:-

1.	*Loss of dependency*	*₹9,43,020/-*
2.	*Funeral expenses*	*₹15,000/-*
3.	*Loss of estate*	*₹15,000/-*
4.	*Loss of consortium*	*₹40,000/-*
	Total	*₹10,13,020/-*
	Less (interim compensation awarded vide order dated 20th May, 2011)	*₹50,000/-*
		₹9,63,020/-

9. In light of the aforesaid, compensation of ₹7,02,773/- granted by

the Tribunal, is enhanced to ₹9,63,020/-which shall carry interest @ 9% per annum. The mode of disbursement of the compensation shall be as per the impugned Award. The compensation be released to the Claimants in terms of this judgment, but in the same manner as indicated by the Tribunal in the impugned Award.

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

(SUNIL GAUR)
JUDGE

SEPTEMBER 05, 2018
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