

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

*Date of Decision: July 20, 2018*

+ **MAC.APP. 624/2016**

SHRI RAM GENERAL INSURANCE CO LTD. ... Appellant  
Through: Ms. Smriti Relan, Advocate for  
Mr. Sameer Nandwani, Advocate

Versus

MUNESH ARYA & ORS. .... Respondents  
Through: Mr. Kunwarpal Singh, Advocate

+ **MAC.APP. 544/2016**

MUNESH ARYA & ORS. .... Appellant  
Through: Mr. Kunwarpal Singh, Advocate

Versus

HAMID & ANR (SHRIRAM GENERAL INSURANCE CO LTD)  
..... Respondent  
Through: Ms. Smriti Relan, Advocate for  
Mr. Sameer Nandwani, Advocate

**CORAM:**  
**HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT**  
**(ORAL)**

**C.M. 29035/2016 in MAC.APP. 624/2016**

There is delay of 30 days in filing the accompanying appeal.

Upon hearing, in the application, it is allowed and delay is condoned.

Application is disposed of.

**MAC.APP. 624/2016 & C.M. 29033/2016 (for stay)**  
**MAC.APP. 544/2016**

1. Impugned Award of 29<sup>th</sup> March, 2016 grants compensation of ₹12,44,860/- with interest @ 12% per annum to the Claimants on account of death of one- *Rakesh Kumar Arya*, aged around 48 years, who died in a vehicular accident which took place on 12<sup>th</sup> February, 2014.
2. In the above captioned first appeal, Insurer seeks reduction in the compensation awarded, whereas in the above captioned second appeal, enhancement of compensation is sought by Claimants. Since both the appeals arise out of common impugned Award, 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.
3. The factual background of this case, as noticed in the impugned Award, is as under:-

*“On 12.02.2014, at 12.40 a.m deceased Rakesh Kumar Arya was coming back to his house after duty from Mile Stone 2000 Restaurants and Banquets, Raj Nagar, Ghaziabad on scooter and reached at Crossing, Mohan Nagar, Ghaziabad where a truck bearing registration no. HR-74-6692 came in a high speed and in a rash and negligent manner and hit against the scooter as a result both of the occupants of scooter sustained multiple crush injuries and succumbed to the injuries. He was removed to General Hospital, Bulandshahar where he was declared brought dead. The post-mortem on the body of*

*the deceased was conducted. FIR no. 164/14 PS, Sahibabd, U.P was registered against respondent no. 1. The accident has taken place due to the rash and negligent driving of respondent no. 1. The vehicle is insured with respondent no. 2.”*

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:-

| S.No. | Name of heads                                  | Amount        |
|-------|------------------------------------------------|---------------|
| 1.    | Loss of dependency/ contribution to the family | ₹7,69,860/-   |
| 2.    | Loss of consortium                             | ₹1,00,000/-   |
| 3.    | Loss of love and affection                     | ₹2,50,000/-   |
| 4.    | Loss of estate                                 | ₹1,00,000/-   |
| 5.    | Funeral and transportation expenses            | ₹25,000/-     |
|       | Total                                          | ₹12, 44,860/- |

5. The challenge to the impugned Award by counsel for Insurer is on the ground that grant of compensation of ₹2,50,000/- under the head of “*loss of love and affection*” awarded by the Tribunal is to be disallowed in view of Supreme Court’s Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680. Counsel for Insurer further submits that compensation granted under the non-pecuniary heads ought to be suitably reduced in terms of Supreme Court’s decision in *Pranay Sethi (Supra)*.

6. On the other hand, learned counsel for Claimants submits that the compensation awarded by the Tribunal is wholly inadequate, as the

Tribunal has erred in assessing income of deceased on minimum wages of a skilled workman. It is pointed out that in view of *Experience Certificate (Ex. PW-1/11)* issued by Hotel Kanishka, judicial notice can be taken note of the fact that deceased was earning ₹10,000/- p.m. It is further submitted that the Tribunal has erred in not making any addition towards future prospects while assessing the “*loss of dependency*”. So, it is submitted that the compensation awarded by the Tribunal needs to be suitably enhanced.

7. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that the *Experience Certificate (Ex. PW1/10)* issued by Hotel Softel Surya, which has been placed on record by widow of deceased, shows that the deceased had worked in the said hotel in the Service Department in Grade-I and had taken voluntary retirement in December, 2002. As per evidence of widow of deceased, before his death, the deceased was working in a restaurant named- *Milestone 2000* but unfortunately, no documentary proof regarding employment of deceased in the said restaurant is on record. A perusal of record reveals that during the course of evidence, notice was issued to *Ravneet Singh*, owner of restaurant- *Milestone 2000* and as per Tribunal’s order of 16<sup>th</sup> November, 2015, notice sent was received back unserved with the report that he is not doing any business at the given address. Considering the *Experience Certificate (Ex. PW1/10)* issued by Hotel Softel Surya and *Experience Certificate (Ex. PW1/11)* issued by Hotel Kanishka, judicial notice can be taken of the fact that a person with similar qualification as that of deceased, would have earned at least

₹10,000/- per month. Thus, the Tribunal has erred in assessing the “*loss of dependency*” while taking the income of deceased on minimum wages.

8. As regards addition towards “*future prospects*”, I find that deceased was aged about 48 years on the date of accident and so, in view of Supreme Court’s decision in *Pranay Sethi (Supra)*, addition of 25% towards “*future prospects*” is to be made. Accordingly. “*loss of dependency*” is re-calculated as under:-

$$₹10,000/- \text{ p.m.} \times 12 \times 13 \times 125/100 \times 3/4 = ₹14,62,500/-$$

9. So far as compensation granted under the ‘*non pecuniary heads*’ is concerned, it needs to be brought in tune Supreme Court’s decision in *Pranay Sethi (supra)*. Accordingly, compensation granted by the Tribunal under the head of ‘*loss of love & affection*’ is disallowed. The “*funeral expenses*” are reduced from ₹25,000/- to ₹15,000/-. Similarly, compensation granted under the head “*loss of estate*” is reduced from ₹1,00,000/- to ₹15,000/- and compensation granted under the head “*loss of consortium*” is also reduced from ₹1,00,000/- to ₹40,000/-.

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

| S.No. | Name of heads      | Amount       |
|-------|--------------------|--------------|
| 1.    | Loss of dependency | ₹14,62,500/- |
| 2.    | Loss of consortium | ₹40,000/-    |
| 4.    | Loss of estate     | ₹15,000/-    |
| 5.    | Funeral expenses   | ₹15,000/-    |
|       | Total              | ₹15,32,500/- |

11. Consequentially, the compensation amount payable stands enhanced from ₹12,44,860 to ₹15,32,500/-. A Three Judge Bench of Supreme Court in a recent decision of *Jagdish v. Mohan and Others*, (2018) 4 SCC 571 has granted interest @ 9% *per annum* on the awarded compensation and so, in the instant case, it is directed that the re-assessed compensation shall carry interest @ 9% *per annum* and not 12% as awarded by the Tribunal. The enhanced compensation with interest be deposited by Insurer with the Registrar General of this Court within four weeks from today. The awarded compensation be disbursed in the ratio and manner as indicated in the impugned Award. Statutory deposit be refunded to Insurer.

12. While modifying the impugned Award in aforesaid terms, the above captioned two appeals and application are accordingly disposed of.

**(SUNIL GAUR)**  
**JUDGE**

**JULY 20, 2018**

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