* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: April 18, 2018

\+ **MAC.APP. 941/2014 & CMs 17330/14, 21371/14**

SHRI RAM GENERAL INSURANCE CO.LTD ..... Appellant
Through: Mr. Kamal Deep, Advocate

versus

AASIYA VANO & ORS .....Respondents
Through: Mr. S.N. Parashar, Advocate for respondents No.1 to 3

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 28th July, 2014 grants compensation of ₹22,10,000/- with interest @ 9% *per annum* to respondents-Claimants on account of death of one *Nimal Ali @ Niyaz Ali,* who had sustained fatal injuries in a vehicular accident on 9th July, 2012 at Dwarka Palam Road, near Dwarka Flyover, New Delhi. The factual background, as noticed in impugned Award, is as under: -

> *"It is the case of the petitioners that on 9.07.2012 at about 03.45 hours, the deceased met with an accident due to the rash and negligent driving of the respondent No. 1 who was driving vehicle No.HR-74-7177 who hit the deceased with forceful impact and FIR No. 165/12 under Sections 279/338/304A IPC was lodged at PS Delhi Cantt. It is stated that the deceased was 30 years of age and was doing private work as a driver and was earning Rs. 15,000/- p.m. It is averred that the deceased was the sole*

bread earner of his family and all the petitioners suffered financial loss, love and affection and loss of earning which was caused due to the accident. It is averred that all the respondents are severally and jointly liable to make the payment of the compensation amount to the petitioners. It is prayed that an amount of Rs. 40,00,000/- be awarded as compensation in favour of the petitioners and against the respondents."

2. While relying upon evidence recorded, *the Motor Accident Claims Tribunal-2, New Delhi (hereinafter referred to as 'the Tribunal')* has granted compensation, whose break-up is as under: -

" *Loss of dependency*	:	*₹20,40,000/-*
Love and affection	:	*₹50,000/-*
Loss of Consortium	:	*₹1,00,000/-*
Loss of Estate	:	*₹10,000/-*
Funeral Expenses	:	*₹10,000/-*
Total	:	***₹22,10,000/-*** "

3. The challenge to impugned Award by learned counsel for appellant-*Insurer* is on the ground that the accident in question had taken place due to contributory negligence of deceased, who was rashly driving the Dumper No.HR 38R 8826. It is submitted that there was no eye-witness account and so, the Tribunal has wrongly held the driver of the insured vehicle responsible for the accident in question.

4. On the quantum of compensation awarded, it is submitted that the salary of deceased ought to have been assessed at minimum wages and the compensation granted under the non-pecuniary heads is on higher side and it needs to be reduced in light of Supreme Court's Constitution Bench

decision in *National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.* 2017 SCC OnLine SC 1270. It is further submitted that addition of 50% towards *'future prospects'* is also on higher side and it needs to be reduced to 40% in light of decision in *Pranay Sethi (supra).* Thus, it is submitted that the compensation granted by the Tribunal deserves to be accordingly modified.

5. On the contrary, learned counsel for respondents-Claimants submits that instant case is not of contributory negligence and the compensation awarded is just and proper. Nothing else is urged on behalf of either side.

6. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that the site plan of the spot, coupled with the mechanical inspection report, does reveal that the insured truck was struck from behind, but the driver of the insured truck ought to have stepped into the witness box, so that it could be said as to whether the instant case is of contributory negligence or not. On the basis of evidence of record, it cannot be said that the instant case is of contributory negligence.

7. So far as the compensation granted is concerned, I find that deceased was a truck driver and in normal course, he would have earned ₹10,000/- per month and so, no case is made out to scale down his income to minimum wages at the relevant time. As regards addition of 50% towards *'future prospects',* I find that in view of decision in *Pranay Sethi (supra)*, it needs to be reduced from 50% to 40% and it is so ordered. Accordingly, *'loss of dependency'* is re-assessed at ₹19,04,000/- *[i.e. ₹10,000/- + ₹4,000/- X 12 X 17 - 1/3rd (towards personal expenses)].*

8. Under the non-pecuniary heads, in view of decision in *Pranay Sethi (supra)*, compensation granted under the head of *'love and affection'* is disallowed and compensation granted under the head of *'loss of consortium'* is reduced from ₹ 1 lac to ₹ 40,000/-. Compensation granted under the heads of *'loss of estate'* is increased from ₹10,000/- to ₹15,000/- and *'funeral expenses'* are also increased from ₹10,000/- to ₹15,000/-. Accordingly, compensation payable to respondents-Claimants is re-assessed as under: -

Loss of dependency	:	₹ 19,04,000/-
Loss of Consortium	:	₹ 40,000/-
Loss of Estate	:	₹15,000/-
Funeral Expenses	:	₹15,000/-
Total	**:**	**₹19,74,000/-**

9. In light of aforesaid, the quantum of compensation granted to respondents-Claimants is reduced from ₹22,10,000/- to ₹19,74,000/-, which shall carry interest @ 9% *per annum.* The excess amount deposited by appellant-Insurer be refunded and the modified compensation in terms of this judgment be disbursed to respondents-Claimants in the manner and ratio as indicated in impugned Award and thereafter, the statutory deposit be refunded to appellant-Insurer.

10. The appeal and the pending applications are disposed of in the aforesaid terms.

(SUNIL GAUR)
JUDGE

APRIL 18, 2018
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