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

Date of Decision: July 16, 2018

\+ MAC.APP. 87/2013 & C.M.No. 1515/2013

SHRIRAM GENERAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. Sameer Nandwani & Mr. Junainadullah, Advocates

Versus

VIJENDER & ORS. .....Respondents
Through: Mr. Kumar Mukesh, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 24th August, 2012 grants compensation of ₹11,33,000/- with interest @ 12% p.a. to respondents-Claimants on account of death of one- *Harish Chander,* aged 22 years in a vehicular accident on 7th December, 2009.

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

> *"Petitioners being the father, mother and brother of deceased Harish Chander who was aged about 22 years filed the present claim petition claiming therein a compensation of Rs.80 lakhs with interest @18% p.a. on the ground that on 07.12.2009 the deceased was on motorcycle with reasonable speed and at about 5.45 p.m. when he reached near Punjab Khurd Bus Stand, Kanjhawala, Delhi, a Tempo Tata 407 no.*

DL-1LE-4421 was coming in a high speed being driven rashly, recklessly and negligently by the respondent no.3 in the course of his employment under respondent no.2 and insured with respondent no.1 came from front side of the deceased at a reckless speed and hit the said motorcycle as a result of which the deceased got death at the spot. Further it is stated that respondent no.3 could have easily avoided and averted this accident. After the accident the deceased was brought to Sanjay Gandhi Hospital where he was declared as brought dead. Further it is alleged that respondent no.3 was solely and entirely responsible for this accident. A criminal case under Section 279/304-A IPC was registered against respondent no.3 vide FIR No.207/09 in police station Kanjhawala."

3. 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	:	₹7,14,000/-
2.) Loss of income	:	₹1,19,000/-
3.) Funeral expenses	:	₹25,000/-
4.) Loss of estate	:	₹75,000/-
5.) Loss of company, love and affection	:	₹2,00,000/-
Total	:	₹11,33,000/-

4. The challenge to impugned Award by learned counsel for Insurer is on the ground that the deceased was a student and so, his notional income ought to be taken into consideration while assessing his income and by relying upon Second Schedule of Motor Vehicles Act, 1988, income of ₹15,000/- per month has to be the basis for calculating the notional income. Reliance is placed upon Supreme Court's decision in *Master Mallikarjun v. Divisional Manager, The National Insurance Company*

Limited and Anr., AIR 2014 SC 736 and *R.K. Malik & Anr. Vs. Kiran Pal & Ors.* (2009) 14 SCC 1 in support of above submissions. Lastly, it is submitted by counsel for Insurer that that the compensation granted under the *"non-pecuniary heads"* ought to be reduced in light of Constitution Bench decision of Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680.

5. On the contrary, learned counsel for respondent-Insurer supports the impugned Award and submits that the compensation awarded is just and fair. So, it is submitted by learned counsel for respondents that this appeal deserves to be dismissed.

6. Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that regarding deceased running two shops and his income, there is no tangible evidence on record. No Income Tax Return has been placed on record. In the impugned Award, the income of deceased has been taken to be ₹8,500/- p.m. The minimum wages payable to an unskilled worker on the date of accident were ₹3,953/- p.m. There is nothing on record to show that the deceased was a student and so, reliance placed upon decision in *R.K. Malik (supra)* is of no avail. While taking the monthly income of the deceased to be ₹3,953/- p.m. and after making addition of 40% towards *"future prospects",* in light of Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680 and after deducting 50% towards *"personal expenses"* of deceased and on applying multiplier of 18, the *"loss of dependency"* is reassessed as under:-

₹3,953/- X 12 X140/100 X 18 X 50/100 = ₹5,97,694/-

(rounded off to ₹5,97,700/-)

7. As regards compensation granted under the *'non pecuniary heads'*, it needs to be brought in tune with Supreme Court's Constitution Bench decision in *Pranay Sethi (supra).* Accordingly, compensation granted by the Tribunal under the head of *'loss of company, 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 also reduced from ₹75,000/- to ₹15,000/-.

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

S.No.	Description	Amount
1.	Loss of Dependency	₹5,97,700/-
3.	Funeral Expenses	₹15,000/-
4.	Loss of Estate	₹15,000/-
	Total	₹6,27,700/-

9. Consequentially, the compensation amount payable stands reduced from ₹11,33,000/- to ₹6,27,700/-. So far as interest granted by the Tribunal is concerned, 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, interest granted @12% p.a. is reduced to 9% p.a. Thus, it is directed that the re-assessed compensation shall carry interest @ 9% *per annum*. The modified compensation be disbursed in the ratio and manner as indicated in the impugned Award. Statutory deposit alongwith excess

deposit be refunded to Insurer.

10. With aforesaid directions, this appeal and the application are accordingly disposed of.

(SUNIL GAUR)
JUDGE

JULY 16, 2018
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