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

Date of Decision: August 10, 2018

\+ **MAC.APP. 719/2016 & CM 32307/2016**
\+ **MAC.APP. 720/2016 & CM 32322/2016**
\+ **MAC.APP. 721/2016 & CM 32324/2016**

ICICI LOMBARD GENERAL INSURANCE CO LTD
..... Appellant
Through: Mr. A.K. Soni and Mr. Pavan Kumar, Advocates

Versus

NAFE SINGH & ORS
MUNESH & ORS
KRISHAN KUMAR & ORS ..... Respondents
Through: Mr.Jatinder Kamra, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above-captioned three appeals relate to one vehicular accident, which took place on 20th August, 2007 in which a self employed-*Amit S/o Nafe Singh,* aged 18 years; a labourer-*Joginder@ Kala S/o Surat Singh,* aged 30 years and labourer-*Raman S/o Krishan Kumar,* aged 19 years, had died. With the consent of learned counsel for the parties, the above-captioned three appeals have been heard together and are being decided by this common judgment. As per last order, service is complete. During the pendency of these appeals, *Nafe Singh,* one of the legal heirs of

deceased-*Amit,* had died and now, the sole surviving legal heir of deceased-*Amit* is his mother-*Bimla Devi.*

2. To render the impugned Award, the Tribunal has relied upon evidence of Claimants/ legal heirs of deceased and other documentary evidence on record. The compensation awarded by the Tribunal to Claimants with interest @ 9% p.a. in these appeals, is as under:-

S.No.	**Name of Claimants**	**Compensation Awarded**
1.	Nafe Singh & Ors.	₹8,88,400/-
2.	Munesh & Ors.	₹11,35,000/-
3.	Krishan Kumar & Ors.	₹8,25,000/-

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

> *"This is a claim petition U/s 163-A of The Motor Vehicle's Act, 1988 filed by parents of victim Amit @ Amit Kumar. The latter died in a vehicular accident occurred on 20.08.07 at about 22 hrs. at Katewara Mor, near Sarvodaya Senior Secondary School, Qutabgarh, Village Qutubgarh, Delhi. According to petitioners, on that day i.e. 19.08.07, their son Amit @ Amit Kumar was going somewhere alongwith his friends. They were riding a motorcycle no. HR-26A-3840. At about 22 hrs., when they reached near Katewara Mor, Sarvodya Senior Secondary School, Qutab Garg, Village Qutabgarh, Delhi, they met with an accident. Amit suffered severe injuries and died having succumbed to those injuries.*
>
> *XXXXX*
>
> *…….Apart from Amit Kumar and two other persons namely Joginder @ Kala and Raman Kumar @ Raman reportedly died in same accident."*

4. While computing the *"loss of dependency"*, the income of

deceased-*Amit* was assessed by the Tribunal at ₹3,964/- per month, i.e. minimum wages payable to an unskilled person, and multiplier of 14 was applied. Deduction of 1/3rd towards *"personal expenses"* was made. No addition towards *"future prospects"* was made by the Tribunal. The compensation granted by the Tribunal to the legal heirs of deceased-*Amit* is as under:-

1.	Loss of dependency	₹4,44,192/-
2.	Composite non-pecuniary damages	₹4,44,192/-
	Total	**₹8,88,384/- (rounded of to ₹8,88,400/-)**

5. The Tribunal has assessed the income of deceased-*Joginder* at ₹3,709/- per month while taking the minimum wages of an unskilled person and no addition towards *"future prospects"* has been made. The multiplier applied is of 17 and 1/4th towards *"personal expenses"* has been deducted. The compensation granted to the legal heirs of deceased-*Joginder* is as under:-

1.	Loss of dependency	₹5,67,477/-
2.	Composite non-pecuniary damages	₹5,67,477/-
	Total	**₹11,34,954/- (rounded of to ₹11,35,000/-)**

6. In the case of deceased-*Raman*, minimum wages of a matriculate i.e. ₹3,964/- per month were made the basis to assess the *"loss of dependency"* by the Tribunal while making no addition towards *"future*

prospects" and by applying multiplier of 13. Deduction of 1/3rd towards *"personal expenses"* was made. The compensation granted by the Tribunal to legal heir of deceased-*Raman* is as under:-

1.	Loss of dependency	₹4,12,308/-
2.	Composite non-pecuniary damages	₹4,12,308/-
	Total	**₹8,24,616/-**

7. Despite service, the driver and owner of the insured vehicle have not contested before the Tribunal and this Court as well.

8. The challenge to the impugned Award by learned counsel for appellant-*Insurer* is on the ground that in a petition under Section 163-A of *The Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act of 1988'),* the Tribunal has erred in granting composite non-pecuniary damages equivalent to that of *'loss of dependency'* without any basis. It is submitted that there is no justification for the Tribunal not to adhere to Second Schedule of *the Act of 1988*, which provides for grant of fixed compensation under the *'non-pecuniary heads'*. It is pointed out by Insurer's counsel that as per Second Schedule to *the Act of 1988,* the *'loss of dependency'* can be assessed while taking the income of deceased at ₹40,000/- per annum. It is further submitted by Insurer's counsel that as per Second Schedule of *the Act of 1988*, deduction of 1/3rd towards *'personal expenses'* has to be mandatorily made and it cannot be less or more than this. It is also submitted that the *'composite non-pecuniary damages'* granted by the Tribunal have to be modified to bring it in tune with the *'non-pecuniary damages'* as provided in the Second Schedule of *the Act of 1988.*

9. Learned counsel for Insurer submits that deceased-*Raman* was driving the insured vehicle and since he was not a third party, therefore, his legal heirs are not entitled to any compensation. Reliance is placed upon Supreme Court's decision in *Deepal Girishbhai Soni & Ors. v. United India Insurance Company Ltd., Baroda,* (2004) 5 SCC 385 to submit that in a petition under Section 163-A of *the Act of 1988*, compensation has to be assessed in conformity with the Second Schedule to *the Act of 1988.* Thus, it is submitted that the quantum of compensation granted by the Tribunal deserves to be suitably reduced.

10. On the contrary, counsel for respondents-*Claimants* supports the impugned Award and submits that the compensation granted by the Tribunal is just and fair and so, these appeals deserve to be dismissed.

11. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that the Tribunal has relied upon decision of a Co-ordinate Bench of this Court in *Chetan Malhotra v. Lala Ram,* 2016 SCC OnLine Del 2981 to grant composite compensation under the *'non-pecuniary heads'.* It is settled position that the statutory enactment cannot be substituted/supplanted by the Courts. So, compensation under the *'non-pecuniary heads'* has to be in consonance with the Second Schedule of *the Act of 1988.*

12. As regards the assessment of *'loss of dependency'*, I find that the Tribunal has not adhered to the Second Schedule to *the Act of 1988*. It was required to be done as the claim petitions in the instant case were under Section 163-A of *the Act of 1988.* As per Second Schedule to *the Act of 1988*, the maximum annual income provided therein is of

₹40,000/- per annum. So, it has to be the basis of assessment of *'loss of dependency'*. So far as the application of multiplier is concerned, it has to be as per the age of Claimants. It is so said as the Second Schedule to *the Act of 1988* clearly provides that the multiplier has to be as per the age of victim. It is mandated by Second Schedule to *the Act of 1988* that deduction towards *'personal expenses'* has to be 1/3rd. In case of deceased-*Joginder,* the Tribunal has erred in making deduction of 1/4th towards *'personal expenses'.* Accordingly, *'loss of dependency'* in case of deceased-*Amit* is reassessed as under: -

₹40,000/- X 2/3 X 16 = ₹4,26,667/-

13. Similarly, *'loss of dependency'* in case of deceased-*Joginder* is reassessed as under: -

₹40,000/- X 2/3 X 18 = ₹4,80,000/-

14. In view of aforesaid, *'non-pecuniary damages'* payable to Claimant-*Bimla Devi,* legal heir of deceased-*Amit;* Claimants-*Munesh and Ors.* and legal heirs of deceased-*Joginder*, have to be assessed in terms of Second Schedule to *the Act of 1988.* Accordingly, compensation payable to Claimant-*Bimla Devi,* legal heir of deceased-*Amit* is reassessed as under: -

1.	Loss of dependency	₹4,26,667/-
2.	Funeral expenses	₹2,000/-
3.	Loss of estate	₹2,500/-
	Total	**₹4,31,167/-**

15. Compensation payable to Claimants-*Munesh and Ors.,* legal heirs

of deceased-*Joginder,* is reassessed as under: -

1.	Loss of dependency	₹4,80,000/-
2.	Funeral expenses	₹2,000/-
3.	Loss of estate	₹2,500/-
4.	Loss of consortium	₹5,000/-
	Total	**₹4,89,500/-**

16. So far as deceased-*Raman* is concerned, it has to be kept in mind that the insurance policy was not *'act policy'*, but was a *'comprehensive/package insurance policy'*. Since the instant case is under Section 163-A of *the Act of 1988*, therefore, the question of negligence does not arise. Hence, legal heirs of deceased-*Raman* would be entitled to compensation in terms of Second Schedule as only the use of motor vehicle in such a case is to be seen. Accordingly, the *'loss of dependency'* in case of deceased-*Raman* is reassessed as under: -

₹40,000/- X 2/3 X 16 = ₹4,26,667/-

17. Accordingly, compensation payable to Claimant-*Krishan Kumar & Ors.,* legal heirs of deceased-*Raman,* is reassessed as under: -

1.	Loss of dependency	₹4,26,667/-
2.	Funeral expenses	₹2,000/-
3.	Loss of estate	₹2,500/-
	Total	**₹4,31,167/-**

18. Consequentially, the compensation awarded by the Tribunal to legal heir of deceased-*Amit* is reduced from ₹8,88,400/- to ₹4,31,167/-; compensation granted to legal heirs of deceased-*Joginder* is reduced from ₹11,35,000/- to ₹4,89,500/- and compensation awarded to legal heirs of deceased-*Raman* is reduced from ₹8,25,000/- to ₹4,31,167/-. The

modified compensation shall carry interest @ 9% p.a.. The modified compensation be released forthwith to Claimants in the ratio and manner as indicated in the impugned Award. Statutory deposit along with excess deposit, if any, be refunded to appellant-*Insurer*.

19. With aforesaid directions, the above captioned three appeals and the pending applications are disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 10, 2018
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