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

Date of Decision: July 04, 2018

(i) + **MAC.APP. 66/2013**

ANITA YADAV & ORS. .....Appellants

Through: Mr. Nitin Yadav, Advocate

Versus

ORIENTAL INSURANCE COMPANY LTD. & ORS. .....Respondents

Through: Mr. J.P. Shahi, Advocate

(ii)+ **MAC.APP. 65/2013**

ANITA YADAV .....Appellant

Through: Mr. Nitin Yadav, Advocate

Versus

ORIENTAL INSURANCE COMPANY LTD. & ORS. .....Respondents

Through: Mr. J.P. Shahi, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned two appeals are directed against Award of 1st August, 2012, vide which Motor Accident Claims Tribunal *(henceforth referred to as "the Tribunal")* has granted compensation of ₹9,52,248/-

with interest @ 9% p.a. to claimants on account of death of one *Suresh Chand*, aged 25 years in a vehicular accident on 6th January, 2010.

2. In the above captioned first appeal, impugned Award is assailed on the ground that no compensation has been granted for the damage to car of deceased in the accident in question. In the above captioned second appeal, enhancement of compensation is sought by legal heirs of deceased.

3. With the consent of learned counsel for the parties, both the appeals have been heard together and are being decided by this common judgment.

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

> *That on 06.01.2010 at about 11.50 A.M., deceased was driving Toyota Jeep bearing Registration No. DL 9CC 0036 along with other occupants for coming towards Delhi from village Kalamatpur, District Kaithal, Haryana. When they reached near Pinjupura, P.S. Kalamat, District Kaithal, Haryana, in the meanwhile, the offending vehicle i.e. Tata Truck bearing Registration No. HR 37B 6069 came there, being driven by Respondent No.1 in a rash and negligent manner and hit against the Jeep of the deceased from opposite side. This resulted in head on collision between both the vehicles, due to which Shri Suresh Chand fell down and sustained injuries which ultimately proved fatal.*

5. On the basis of evidence led, impugned Award has been rendered by the Tribunal and the breakup of compensation awarded is as under:-

1.) Loss of dependency	:	₹8,32,248/-
2.) Loss of Love & Affection	:	₹1,00,000/-
3.) Funeral Expenses	:	₹10,000/-
4.) Loss of Estate	:	₹10,000/-
Total	:	₹9,52,248/-

6. Enhancement of compensation is sought by learned counsel for claimants on the ground that addition of 30% towards *"future prospects"* have been made by the Tribunal while taking the age of deceased to be 25 years but in light of decision of Constitution Bench of Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680, addition towards *"future prospects"* has to be 40%. Learned counsel for claimants further submits that the deceased was working as Supervisor in M/s Classic Automobiles at a salary of ₹9,000/- per month and the Salary Certificate has been proved as Ex.PW3/1, which has been erroneously discarded by the Tribunal on the premise that there is nothing on record to prove that PW-3 was the proprietor of M/s Classic Automobiles and as per this witness, neither any receipt regarding the salary being paid to the deceased was issued nor any attendance register was maintained. Therefore, the Tribunal has taken the income of deceased at the minimum wages of unskilled worker, which according to appellant's counsel is unjustified. So, it is submitted that in view of Salary Certificate *(Ex.PW3/1)*, income of the deceased ought to be assessed and quantum of compensation ought to be suitably enhanced.

7. On the contrary, learned counsel for respondent-Insurer supports the impugned Award and submits that the compensation awarded is just and fair.

8. Upon hearing and on perusal of impugned Award and the evidence on record, I find that claimants have not led any evidence regarding the extent of damage caused to the vehicle in question. Learned counsel for appellants has relied upon the Mechanical Inspection Report to show the extent of damage caused to the vehicle in question. It was brought to the notice of this Court by learned counsel for Insurer that it is an offence to drive the vehicle without insurance cover. Attention of this Court is drawn to Section 196 of the *Motor Vehicles Act, 1988,* which provides for imprisonment upto three months or fine, which may extend to ₹1,000/- or with both for driving a vehicle without insurance cover. Since the deceased was driving an uninsured vehicle and no evidence has been led regarding damage caused, therefore, I find that the Tribunal has rightly declined the compensation on account of damage caused to the vehicle in question.

9. Regarding the Salary Certificate *(Ex.PW3/1),* I find that it has come in the cross-examination of *Sharafat (PW-3)* that he used to pay salary to the deceased in cash and did not obtain any receipt thereof and was not maintaining any register. In view thereof, the Tribunal was justified in assessing the income of deceased on minimum wages. However, keeping in view the copy of driving licence of deceased on record, I find that the minimum wages payable to a skilled workman ought to be the basis to assess the income of deceased. It is brought to

the notice of this Court that minimum wages payable to the skilled workman, when this accident took place were ₹4,377/- p.m.

10. In view of Supreme Court's decision in *Pranay Sethi (Supra)*, addition of 40% towards *"future prospects"* is to be made and after deducting 1/4th towards *"personal expenses"* of deceased and by applying multiplier of 18, the *"loss of dependency"* is reassessed as under:-

₹4,377/- X 12 X 18 X 3/4 X140/100 = ₹9,92,703.6 *(rounded off to* ₹9,92,704/-)

11. Since no cross-objections have been filed by respondent-Insurer, therefore, the compensation granted under the *"non-pecuniary heads"* is not disturbed.

12. In the light of aforesaid, total compensation payable to appellants is enhanced from ₹9,52,248/- to ₹11,12,704/-which shall carry interest @ 9% per annum. The enhanced compensation be deposited within four weeks by respondent-Insurer with the Tribunal and it be disbursed in the ratio and manner, as indicated in the impugned Award.

13. Consequentially, the above captioned first appeal i.e. MAC.App.65/2013 is dismissed, whereas the above captioned second appeal MAC.App. 66/2013 is allowed in abovesaid terms.

(SUNIL GAUR)
JUDGE

JULY 04, 2018
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