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

% ***Date of Decision: September 04, 2018***

\+ **MAC.APP. 549/2017, CM Nos.23385/2017 & 17119/2018**

SHRIRAM GENRAL INSURANCE CO LTD .....Appellant

Through: Mr. Pankaj Singh Thakur, Advocate

versus

PRAVEEN KUMAR & ORS. .....Respondents

Through: Mr. Shekhar Aggarwal, Mr. Suresh Kumar and Mr. Ishan Kumar, Advocates for respondents No. 1 to 3

\+ **MAC.APP. 748/2018**

PRAVEEN KUMAR & ORS. .....Appellants

Through: Mr. Shekhar Aggarwal, Mr. Suresh Kumar and Mr. Ishan Kumar, Advocates

versus

SHRIRAM GENERAL INSURANCE CO LTD & ORS. .....Respondents

Through: Mr. Pankaj Singh Thakur, Advocate for respondent No. 3

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned two appeals are directed against Award of 7th April, 2017 vide which compensation of ₹9,41,672/- with interest @ 9% per annum has been awarded to legal heirs of deceased-*Raj Kumari,* a Caretaker,

aged 57 years, who had died in a vehicular accident on 31st October, 2016.

2. In the above captioned first appeal, the Insurer seeks reduction of quantum of compensation granted, whereas in the above captioned second appeal, enhancement of compensation is sought by Claimants.

3. Since these two appeals arise out of common Award of 7th April, 2017, therefore, both these appeals have been heard together and are being decided by this common judgment. The facts as noted in opening paragraphs of the impugned Award are as under:-

> *"Briefly the facts of the case are that on 31.10.16, deceased was standing near the bus stand Ambedkar College for going towards her house at about 6:30 PM. In the meanwhile, the offending vehicle TATA ACE No. DL 1 LM 6481 came from the side of Gol Chakkar and going towards the Wazirabad. Driver of the said offending vehicle was driving the vehicle at a very high speed and in negligent manner and hit the deceased with forceful impact due to which, the deceased fell down and the person namely Rohit Jha called the police. Police came at the spot and deceased was taken to GTB Hospital where she was treated for her multiple grievous injuries on her person and due to this negligent act of the driver of the offending vehicle, the deceased met with the accident and sustained grievous injuries."*

4. To render the impugned Award, the Tribunal has relied upon evidence of son of deceased and the other evidence on record. Since there was no proof of income, therefore, the Tribunal has assessed the loss of income of deceased on the basis of minimum wages of an unskilled worker and no addition towards *'future prospects'* has been made. The Tribunal has relied upon Supreme Court's decision in *Royal Sundaram Alliance Ins. Co. Ltd. vs. Master Manmeet Singh & Ors.* 2012 SCC OnLine Del 583, to make

deduction of 25% from the assumed income, as the age of deceased was above 55 years and less than 60 years. After deducting, one-third towards *'personal expenses'* and by applying the multiplier of 9, the *'loss of dependency*' has been assessed by the Tribunal. The break-up of compensation awarded by the Tribunal is as under:-

1)	*Loss of Dependency*	=	*Rs.5,16,672/-*
2)	*Loss of Love and Affection*	=	*Rs.3,00,000/-*
3)	*Loss of Estate*	=	*Rs.1,00,000/-*
4)	*Funeral Expenses*	=	*Rs. 25,000/-*
	Total	=	*Rs.9,41,672/-*

5. The challenge to impugned award by learned counsel for Insurer is on the ground that *'loss of dependency'* was by son of deceased only, as the other two children of deceased were married and so, deduction of 50% towards *'personal expenses'* ought to have been made by the Tribunal. Reliance is placed upon decision in Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680 to seek reduction in the quantum of compensation granted under the *'non pecuniary heads'*. So, it is submitted that the impugned Award deserves to be suitably modified.

6. On the contrary, learned counsel for the Claimants/legal heirs of the deceased refutes the aforesaid stand taken on behalf of counsel for Insurer and submits that the quantum of compensation granted by the Tribunal is inadequate. It is pointed out that deduction towards *'personal expenses'* is not justified as the Tribunal has already made deduction of 25% in view of the decision in *Royal Sundaram* (*Supra*). Thus, enhancement of

compensation awarded is sought by learned counsel for the Claimants.

7. Upon hearing and on perusal of impugned award, evidence on record and the decisions cited, I find that Supreme Court's decision in *Royal Sundaram(Supra)* cannot be the basis to assess the loss of dependency in view of Supreme Court's Constitution Bench decision in *Pranay Sethi (Supra).*Since there was no proof of income of the deceased, therefore the notional income has to be assessed on minimum wages of an unskilled worker. A Housewife cannot be said to be an unskilled worker. A housewife is a homemaker for the life time for which special skills are employed. At the relevant time, the minimum wages of a skilled worker were ₹11,830/- per month. In the light of Supreme Court's Constitution Bench decision in *Pranay Sethi (Supra),* after deducting 25% towards *'personal expenses'*, the notional monthly income of the deceased is assessed at ₹8,872.5 *(rounded of* ₹8,873/-). Thus, the '*loss of dependency*' is re-assessed as under:

₹8,873/- X 12 X 9 = ₹9,58,284/-.

8. The compensation granted by Tribunal under the non-pecuniary heads needs to be brought in tune with Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680. Accordingly, compensation of ₹3,00,000/- granted by the Tribunal under the head of '*loss of love and affection*' is disallowed. The *'funeral expense'* are reduced from ₹25,000/- to ₹15,000/- and compensation granted under the head *'loss of estate'* is also reduced from ₹1,00,000/- to ₹15,000/-. Thus, the compensation payable to the Claimants is re-assessed as under:-

1.	*Loss of dependency:*	*₹9,58,284/-*
2.	*Loss of estate*	*₹15,000/-*
3.	*Funeral Expenses*	*₹15,000 /-*
	Total compensation:	*₹9,88,284/-*

9. In light of the aforesaid, compensation of ₹9,41,672/- granted by the Tribunal, is enhanced to ₹9,88,284/- which shall carry interest @ 9% per annum. Registry is directed to refund the statutory deposit, subject to deposit of enhanced compensation by the Insurer and thereafter, the compensation be released to the Claimants in terms of this judgment but in the same ratio as indicated by the Tribunal in the impugned Award.

10. With aforesaid directions, both these appeals and the pending applications are accordingly disposed of.

(SUNIL GAUR)
JUDGE

SEPTEMBER 04, 2018
v