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

Date of Decision: August 20, 2018

\+ **MAC.APP.460/2015**

RELIANCE GENERAL INSURANCE LTD. ..... Appellant

Through: Mr. Rajeev M. Roy and Mr. P. Srinivasan, Advocates

Versus

SMT. L. SHANTI DEVI & ORS. .....Respondents

Through: Ms. Anne Mathew, Advocate for respondents No.1 & 2

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. Impugned Award of 20th March, 2015 grants compensation of ₹33,40,038/- with interest @ 8% p.a. to respondent-*Claimants* on account of death of one Supervisor-*L. Binoy Singh,* aged 26 years, in a vehicular accident on 31st October, 2009.

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

> *"The case of the petitioners is that on 31.10.2009 when Sh. Ginkhanmug Tombing, S.N. Bijen Singh, Sh. Kalvin and deceased were going in Maruti 800 bearing No. DL 8 CC 0083 which was driven by Sh. Ginkhanmug Tombing and when they reached at Raja Garden Crossing in the meantime Hyundai i-10 car bearing registration No. DL 4C AJ 5940 which was being driven by its driver/respondent No.1 in rash and negligent manner and at a very high sped hit the Maruti car from back side with*

> *great force. Resultantly Sh. L. Binoy Singh, Sh. Kalvind and Bijen sustained grievous injuries. Deceased was removed to Khetrapal Hospital and was further shifted to Max Hospital and died on 16.11.2009."*

3. On the basis of evidence led, impugned Award has been rendered by Motor Accident Claims Tribunal *(henceforth referred to as "the Tribunal")*. The Tribunal has found that deceased was a bachelor aged 26 years and his income has been taken as ₹18,000/- per month in the face of Salary Certificate *(Ex. PW1/18) [Salary Certificate, which is exhibited as PW1/28 though inadvertently recorded by the Tribunal as PW1/18]*. The Tribunal has made addition of 50% towards *'future prospects'* and has deducted 50% towards *'personal expenses'*. The breakup of compensation awarded by the Tribunal is as under:-

1.) Loss of dependency	:	₹27,54,000/-
2.) Funeral expenses	:	₹25,000/-
3.) Loss of Estate	:	₹10,000/-
4.) Loss of Love & Affection	:	₹1,00,000/-
5.) Medical expenses incurred	:	₹4,51,038/-
Total	:	₹33,40,038/-

4. The challenge to impugned Award by learned counsel for appellant-Insurer is on the ground of contributory negligence of driver of Maruti Car, which was involved in this accident. According to Insurer's counsel, Salary Certificate *(Ex.PW1/28)* has not been proved on record. Lastly, it is submitted by Insurer's counsel that the compensation granted by the Tribunal under the *'non-pecuniary heads'* needs to be brought in

tune with Supreme Court's Constitution Bench decision in *National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680.

5. On the contrary, learned counsel for respondent-*Claimants* supports the impugned Award and submits that there is no negligence of the driver of Maruti Car and that the compensation has been rightly assessed by the Tribunal. However, on the aspect of interest granted by the Tribunal, it is submitted that it is on lower side and it needs to be enhanced from 8% to 9% *per annum*.

6. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that on negligence aspect, there is evidence of *N.Bijen Singh* and *Kalvin*, who were travelling with the deceased in the vehicle in question and from their evidence, the negligence of driver of the insured vehicle stands proved. The site plan of the place of accident *(Ex. PW1/2)* corroborates their version. Upon scrutiny of cross-examination of these two witnesses-*N.Bijen Singh* and *Kalvin,* I find that nothing worthwhile has been brought out in their cross-examination to demolish the reliable version of the accident in question and so, the plea of lack of negligence on part of the driver of insured vehicle is repelled.

7. So far as deceased's Salary Certificate *(Ex.PW1/28)* is concerned, I find that deceased had passed Higher Secondary Examination from Manipur and was employed as an Assistant Team Leader with *e-call International Pvt. Ltd.* and as per Salary Certificate of deceased issued in August, 2006, he was drawing net pay of ₹16,419/-p.m. *N.Bijen Singh (PW-2)* has proved the deceased's *'appointment letter'* and *Salary Certificate (Ex.PW1/28)* issued by him in the year 2009, which reveals

that he was drawing salary of ₹18,000/- p.m. while working as Senior Supervisor. Although from the evidence of *N.Bijen Singh (PW-2)*, Salary Certificate *(PW1/28)* has been proved on record, but on perusal of the cross-examination of this witness, I find that salary was paid to the deceased in cash and no salary record was maintained by this witness *(PW-2).* This aspect assumes importance in view of the fact that deceased was a childhood friend of this witness *(PW-2).* So far as salary record for the month of August, 2006, produced by Claimant regarding deceased's employment with *e-call International Pvt. Ltd.* and of deceased drawing net pay of ₹16,419/- is concerned, I find that this Salary Certificate has not been proved on record. However, taking the judicial notice of the fact as to what would be the salary of employees of Call-Centres in the year 2009, it is deemed appropriate to assess the income of deceased at ₹10,000/- per month as he was Senior Supervisor/Team Leader. In view of Supreme Court's Constitution Bench decision in *Pranay Sethi (Supra)*, I find that the Tribunal has erred in making addition of 50% towards *'future prospects'*. Infact, addition towards *'future prospects'* has to be 40% and is ordered accordingly. Since deceased was a bachelor, therefore, deduction of 50% towards *'personal expenses'* has been rightly made by the Tribunal and is thus maintained. Accordingly, *'loss of dependency'* is reassessed as under: -

₹10,000/- X 12 X 140/100 X 17 X 50/100= ₹14,28,000/-

8. The compensation granted by the Tribunal under the *'non pecuniary heads'*, 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 love & affection"* is disallowed. The *"funeral expenses"* are reduced from ₹25,000/- to ₹15,000/- whereas compensation granted under the head *"loss of estate"* is enhanced from ₹10,000/- to ₹15,000/-.

9. In light of the aforesaid, the compensation payable to respondent-*Claimants* is reassessed as under:-

S.No.	**Description**	**Amount**
1.	Loss of Dependency	₹14,28,000/-
2.	Funeral Expenses	₹15,000/-
3.	Loss of Estate	₹15,000/-
	Total	**₹14,58,000/-**

10. Consequentially, the compensation amount payable to respondent-*Claimants* stands reduced from ₹33,40,038/- to ₹14,58,000/-. 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, respondent- *Claimants* are also entitled to interest @ 9% *per annum*. The modified compensation be released to respondent-*Claimants* within four weeks from today in the ratio and manner as indicated in impugned Award. Statutory deposit alongwith excess deposit, if any, be refunded to appellant-Insurer.

11. With aforesaid directions, this appeal is disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 20, 2018
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