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

Date of Decision: July 20, 2018

\+ MAC.APP. 993/2016

UNIVERSAL SOMPO GEN INS CO LTD. ..... Appellant
Through: Mr. Mohd. Mustafa, Advocate

Versus

RANU MOHAPTRA & ORS. ..... Respondents
Through: Mr. Navneet Goyal, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

<u>JUDGMENT</u>
(ORAL)

1. Impugned Award of 23rd August, 2016 grants compensation of ₹31,16,360/- with interest @ 9% p.a. to Claimants on account of death of one *Prasanta Mahapatra*, aged 33 years, in a vehicular accident on 13th September, 2015.

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

> *"Vide this judgment, I shall dispose of DAR filed with respect to the claim of the petitioners on account of the death of Mr.Prasanta Mahapatra, S/o Sh. Bipin, aged 33 Years occurred in accident dated 13.09.2015 at about 1:00 AM, at opposite IIT Hostel R K Puram Sector 3 Sports Ground, New Delhi. In respect of this accident, an FIR bearing no.929/15, U/S 279/304A of IPC was registered in PS Safdarjung Enclave, New Delhi."*

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	:	₹38,88,000/-
2.) Loss of Love and Affection	:	₹1,00,000/-
3.) Funeral expenses	:	₹25,000/-
4.) Loss of Estate	:	₹10,000/-
5.) Loss of Consortium	:	₹1,00,000/-
Total	:	₹41,23,000/-
Less: Amount paid under W.C.Act	:	₹8,06,640/-
		₹33,16,360/-
Less: Ex gratia amount paid by DMRC	:	₹2,00,000/-
Total	:	₹31,16,360/-

4. The challenge to impugned Award by learned counsel for appellant-Insurer is on the ground that Claimants have already received compensation under the Employees' Compensation Act, 1923 and so, in view of Section 167 of the *Motor Vehicles Act, 1988*, the claimants are barred from claiming compensation under the *Motor Vehicles Act, 1988.* It is submitted that the Tribunal has concluded that deceased was a daily wager and was drawing different wages in different months and the Tribunal has erred in taking the income of deceased at ₹18,000/- p.m. on average basis. It is pointed out that as per the wage slips of the deceased, the average wage of deceased would be ₹15,759/- and not ₹18,000/-. It is submitted that the Tribunal has erred in making addition of 50% towards *"future prospects"* and in view of Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.*

(2017) 16 SCC 680, addition of 40% towards *"future prospects"* is to be made. Lastly, it is submitted by Counsel for Insurer that compensation granted under the *"non-pecuniary heads"* ought to be suitably reduced in light of Supreme Court's decision in *Pranay Sethi (Supra).*

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

6. Upon hearing and on perusal of impugned Award and the evidence on record, I find that Section 167 of *The Motor Vehicles Act, 1988* provides that compensation under this Act and under *Employees' Compensation Act, 1923* cannot be simultaneously claimed by the Claimants. In the impugned Award, compensation awarded under the *Employees' Compensation Act, 1923* has been set off against compensation granted under the *Motor Vehicles Act, 1988*. So, it cannot be said that the claim petition is barred.

7. So far income of deceased is concerned, I find on perusal of wage slips *(Ex. PW3/B colly)*, that the Tribunal has rightly assessed wages of deceased at ₹18,000/- on average basis. In light of Supreme Court's decision in *Pranay Sethi (Supra),* addition towards *'future prospects'* ought to be 40% and not 50% as awarded by the Tribunal.

8. In view of aforesaid, *"loss of dependency"* is reassessed as under:-

₹18,000/- X 12 X 16 X 3/4 X 140/100 = ₹36,28,800/-

9. As regards compensation granted under the *'non pecuniary heads'*, it needs to be brought in tune with Constitution Bench decision of

Supreme Court 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/-. Similarly, compensation granted under the head *"loss of consortium"* is also reduced from ₹1,00,000/- to ₹40,000/-. However, compensation granted under the head *"loss of estate"* is increased from ₹10,000/- to ₹15,000/-.

10. Accordingly, the compensation payable to Claimants is reassessed as under:-

S.No.	Description	Amount
1.	Loss of Dependency	₹36,28,800/-
2.	Loss of Consortium	₹40,000/-
3.	Funeral Expenses	₹15,000/-
4.	Loss of Estate	₹15,000/-
	Total	₹36,98,800/-
	Less: Amount paid under W.C.Act	₹8,06,640/-
	Less: Ex gratia amount paid by DMRC	₹2,00,000/-
	Total	₹26,92,160/-

11. Consequentially, the compensation amount payable stands reduced from ₹31,16,360/- to ₹26,92,160/-. 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, interest @ 9% *per annum* granted in the instant case is maintained. The modified compensation be released forthwith to Claimants in the manner and ratio indicated in the impugned Award. Statutory deposit along with excess deposit be refunded to Insurer.

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

(SUNIL GAUR)
JUDGE

JULY 20, 2018
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