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

***Date of Decision: July 26, 2018***

\+ **MAC.APP. 547/2017 & C.M. 23366/2017**

THE ORIENTAL INSURANCE CO LTD. ..... Appellant
Through: Mr. A.K.Soni, Advocate

Versus

BABY DIVIJA & ORS. ..... Respondents
Through: Mr. Satyam Thareja & Ms. Neha Mishra, Advocates

**CORAM:**
**HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT**
**(ORAL)**

1. Impugned Award of 7th April, 2017 grants compensation of ₹96,03,736/- with interest @ 10% p.a. to respondents-*Claimants* on account of death of a Primary School Teacher- *Smt. Nisha,* aged 26 years, in a vehicular accident on 26th September, 2012.

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

> *"Detailed Accident Report (hereinafter be referred as "DAR") was filed in FIR No. 217/12, PS Chhawala on 07.01.2013 and separate petition bearing no. 1466/16 U/Sec. 166 & 140 MV Act arising out of same accident was also filed on behalf of petitioners on 07.01.2013. The case of the petitioners is that on 26.09.2012 Smt. Nisha Yadav was killed in an accident caused by respondent no. 1 while driving truck bearing registration no. HR 63A 9920 in a rash and*

*negligent manner at Main road Ghumanhera Road, near Electricity Pole No. BSES/JFPX117, 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:-

| S.No. | HEADS | AMOUNT |
|---|---|---|
| 1. | Loss of dependency | ₹92,78,736/- |
| 2. | Funeral Expenses | ₹25,000/- |
| 3. | Loss of Consortium | ₹1,00,000/- |
| 4. | Loss of Estate | ₹1,00,000/- |
| 5. | Loss of Love and affection towards children ( 1Lac X 1) | ₹1,00,000/- |
| | Total | ₹96,03,736/- |

4. The challenge to impugned Award by learned counsel for appellant-*Insurer* is on the ground that while assessing *"loss of dependency"*, the Tribunal has erred in not deducting income tax from the annual income of deceased. It is submitted by counsel for Insurer that the Tribunal has erred in making addition of 100% towards *"future prospects"* whereas in view of Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680, addition towards *"future prospects"* ought to be 50%. It is next 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).* Counsel for Insurer further submits that the rate of interest awarded on the

compensation amount ought to be 9% p.a. and not 10% p.a., as awarded by the Tribunal. Thus, reduction of compensation is sought by counsel for Insurer.

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

6. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that the Tribunal has erred in not deducting income tax from the annual income of deceased. Supreme Court in *Pranay Sethi (Supra)* has reiterated that where the annual income is in the taxable range, the word *"actual salary"* should be read as *"actual salary less tax"*. So far as addition towards *"future prospects"* is concerned, I find that Tribunal has erred in making addition of 100% whereas in terms of Supreme Court's decision in *Pranay Sethi (Supra)*, addition towards *"future prospects"* has to be 50%. Thus, the *"loss of dependency"* is recalculated as under:-

₹3,90,616/- X 150/100 X 2/3 X 17 = ₹66,40,472/-

7. The compensation granted 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 towards children"* is disallowed. The *"funeral expenses"* are decreased from ₹25,000/- to ₹15,000/-. Similarly, compensation granted under the head *"loss of estate"* is also decreased from ₹1,00,000/- to ₹15,000/- and compensation granted under the head *"loss of consortium"* is also reduced from

₹1,00,000/- to ₹40,000/-.

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

| S.No. | Description | Amount |
|---|---|---|
| 1. | Loss of Dependency | ₹66,40,472/- |
| 2. | Loss of Consortium | ₹40,000/- |
| 3. | Funeral Expenses | ₹15,000/- |
| 4. | Loss of Estate | ₹15,000/- |
| | Total | ₹67,10,472/- |

9. Consequentially, total compensation payable to respondent-*Claimants* is reduced from ₹96,03,736/- to ₹67,10,472/-. 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 awarded by the Tribunal is reduced from 10% to 9% *per annum*. The modified compensation awarded be released forthwith to respondents-*Claimants* in the manner and ratio as indicated in the impugned Award. Statutory deposit alongwith excess deposit, if any, be refunded to appellant-*Insurer*.

10. With aforesaid directions, this appeal and the application are disposed of.

**(SUNIL GAUR)**
**JUDGE**

**JULY 26, 2018**
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