* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: July 17, 2018

\+ **MAC.APP.720/2017 & CM 29082/2017**

ICICI LOMBARD GENRAL INSURANCE CO LTD.....Appellant
Through: Mr. Pankaj Gupta, Advocate for Ms. Suman Bagga, Advocate

Versus

SAHID AHMED & ORS. .....Respondents
Through: Mr. Anshuman Bal, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

C.M. 29083/2017 (delay)

There is delay of 123 days in filing the accompanying appeal.

Upon hearing, I find that sufficient cause is shown to condone the delay occasioned. The application is allowed and the delay stands condoned.

The application is disposed of.

MAC.APP.720/2017 & CM 29082/2017

1. Impugned Award of 30th November, 2016 grants compensation of ₹8,41,205/- with interest @ 10% p.a. to respondents-Claimants on account of death of one *Gordhani* aged 74 years in a vehicular accident on 16th September, 2015.

2. The factual background of this case, as noticed in the impugned

Award, is as under:-

> *"The present claim petition has been filed by petitioner under Section 166 and 140 of M.V. Act. The case of the petitioner is that on 16.09.2015 her deceased wife Smt. Gordhani has met with an accident caused by respondent no. 1 Jabar Singh while driving motorcycle bearing registration no. DL-9S-AX-1680 near Hero Honda Showroom, Main Najafgarh, Chhawla Road, New Delhi and as a result, his wife was killed."*

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	:	₹4,16,205/-
2.) For Funeral expenses	:	₹25,000/-
3.) Loss of consortium	:	₹1,00,000/-
4.) Loss of estate	:	₹1,00,000/-
5.) Loss of love and affection to children (1,00,000 X 2)	:	₹2,00,000/-
Total	:	₹8,41,205/-

4. The challenge to impugned Award by learned counsel for appellant-Insurer is on the ground that insured vehicle was not involved in the accident in question. Learned counsel for appellant-Insurer further submits that compensation granted under the *"non-pecuniary heads"* ought to be suitably reduced in light of Supreme Court's Constitution Bench decision in *National Insurance Company 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 the compensation granted by the Tribunal is just and fair. So, it is submitted by learned counsel for

respondents that this appeal deserves to be dismissed.

6. Upon hearing and on perusal of impugned Award and the evidence on record, I find that the eye-witness *Asha* in her evidence has categorically stated as to how this accident took place. As per *Detailed Accident Report (DAR)* on record, statement of *Asha* was recorded by the police wherein she had narrated as to how the accident had taken place. In view of the evidence of *Asha* and site plan of the spot/place of accident on record, I find that the Tribunal has rightly concluded that the accident had taken place due to negligence of driver of the insured vehicle.

7. As regards the compensation awarded by the Tribunal under the head of *'loss of dependency'*, I find that the income of the deceased has been assessed on minimum wages of an unskilled person. Supreme Court in *Jitendra Khimshankar & Ors. Vs. Kasam Daud Kumbhar & Ors.* (2015) 4 SCC 237, while dealing with an accident which had occurred in the year 1990, had taken the notional income of the housewife to be ₹3,000/- p.m. The minimum wages then were around Rs. 1,000/- p.m.. In view thereof, I find that the basis to assess the income of the deceased is valid. However, in view of decision of Supreme Court in *Pranay Sethi* (supra), addition towards *'future prospects'* made by the Tribunal is unjustified and hence, disallowed. In view of Supreme Court's decision in *Pranay Sethi* (Supra), compensation granted by the Tribunal under the head of *'love and affection'* is also disallowed. The deduction of *'personal expenses'* of the deceased ought to be 50% and not 1/3rd as assessed by the Tribunal. Accordingly, the *'loss of dependency'* is reassessed as under:-

₹ 9,048/- X 12 X 5 X 50/100 = ₹ 2,71,440/-

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

S.No.	Description	Amount
1.	Loss of Dependency	₹2,71,440/-
2.	Loss of Consortium	₹40,000/-
3.	Funeral Expenses	₹15,000/-
4.	Loss of Estate	₹15,000/-
	Total	₹3,41,440/-

Resultantly, the compensation amount payable stands reduced from ₹8,41,205/- to ₹3,41,440/-. 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, appellant is also entitled to interest @ 9% *per annum.* The payable compensation be disbursed in the ratio and manner, as indicated in the impugned Award. Statutory deposit and the excess deposit be refunded to appellant-Insurer.

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

(SUNIL GAUR)
JUDGE

JULY 17, 2018
v