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

% **Date of Decision: 28th February, 2018**

\+ MAC.APP. 676/2017 & CM No.27795/2017

87 RAM RAHISH YADAV ..... Appellant
Through: Mr. M.L. Yadav, Adv. with appellant in person.

versus

SUSHILA RANI & ORS ..... Respondents
Through: Ms. Raji Nathani, Adv. for R2 & R4.

\+ MAC.APP. 987/2017 & CM No. 40981/2017

88 SHIV SAGAR @ DEEPAK ..... Appellant
Through: Mr. Saurabh Kansal and Mr. Sudhanshu Tiwari, Advs. with appellant in person.

versus

SUSHILA RANI & ORS ..... Respondents
Through: Ms. Raji Nathani, Adv. for R2 & R4.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellants have challenged the award of the Claims Tribunal whereby compensation of Rs.10,16,000/- has been awarded to claimants in both the appeals.

2. On 20th August, 2014, late Vishan Dass was crossing the road when he was hit by motorcycle bearing No.DL-7S-BJ-7619 which resulted in fatal injuries to late Vishan Dass. The deceased was aged 68 years and was

survived by his widow and three sons who filed the application for compensation before the Claims Tribunal. The deceased had retired as Senior Assistant from State Bank of India and was drawing pension of Rs.16,353/-. The widow of the deceased, after the death of late Vishan Dass, is getting family pension of Rs.5,825/- per month. According to the claimants, the deceased was doing property dealing business from which he was earning about Rs.10,000/- per month.

3. The Claims Tribunal took the income of the deceased as Rs.20,528/- (Rs.10,528/- from loss of pension + Rs.10,000/- as income from the property dealing business), deducted ½ towards his personal expenses and applied the multiplier of 5 to compute the loss of dependency to Rs.6,16,000/-. The Claims Tribunal awarded Rs.1,50,000/- towards loss of love and affection, Rs.1,50000/- towards loss of consortium, Rs.50,000/- towards funeral expenses and Rs.50,000/- towards loss of estate. The total compensation awarded is Rs.10,16,000/-.

4. Learned counsel for the appellant urged at the time of hearing that the income of the deceased has been wrongly taken as Rs.20,528/-. It is submitted that the loss of income of the deceased be taken as Rs.10,528/- (difference between pension of the deceased i.e. Rs.16,353/- and the family pension of Rs.5,825/- being received by the widow). It is further submitted that the non-pecuniary compensation be reduced in terms of the judgment of Supreme Court in ***Pranay Sethi vs. National Insurance Co. Limited*** 2017 SCC Online 1117.

5. The record of the Claims Tribunal has been perused. The deceased was getting pension of Rs.16,353/- at the time of the accident and after his death, the widow of the deceased is getting family pension of Rs.5,825/-. As

such, the claimants have suffered loss of Rs.10,528/- per month (Rs.16,353/- – Rs.5,825/-). According to the claimants, the deceased was doing the property dealing business but the claimants were not able to prove the same. As such, the income of the deceased is taken as Rs.10,528/- per month (Rs.16,353/- – Rs.5,825/-). The Claims Tribunal deducted ½ towards the personal expenses of the deceased whereas the appropriate deduction towards the personal expenses has to be 1/3. Taking the income of the deceased as Rs.10,528/-, deducting 1/3 towards the personal expenses and applying the multiplier of 5, the loss of dependency is computed as Rs.4,21,120/-. The claimants are awarded Rs.40,000/- towards loss of consortium, Rs.15,000/- towards of estate and Rs.15,000/- towards funeral expenses in terms of the judgment of Supreme Court in ***Pranay Sethi vs. National Insurance Co. Limited*** 2017 SCC Online 1117. The claimants are further awarded Rs.8,880/- towards loss of love and affection. The claimants are entitled to total compensation of Rs.5,00,000/- along with interest @ 9% per annum from the date of institution of claim petition i.e. 16th September, 2014.

6. Both the appeals are allowed and the compensation amount is reduced from Rs.10,16,000/- to Rs.5,00,000/- along with interest @ 9% per annum from the date of institution i.e. 16th September, 2014.

7. The appellant in MAC.APP.676/2017 has deposited Rs.2,54,000/- with the Claims Tribunal. The Claims Tribunal is directed to release the amount of Rs.2,54,000/- deposited by the appellant in MAC.APP.676/2017 by transferring the same to savings bank account No.10259272090 of respondent No.1, Sushila Rani with State Bank of India, G.T. Road, Shahdara Branch, IFSC Code: SBIN0001189, Branch Code: 01189.

8. The Registrar General is directed to release the statutory amount of Rs.25,000/- along with interest thereon in MAC.APP.676/2017 and Rs.25,000/- along with interest thereon in MAC.APP.987/2017 by instructing UCO Bank, Delhi High Court Branch by transferring the said amounts to aforesaid savings bank account of respondent No.1 with State Bank of India, G.T. Road, Shahdara Branch.

9. The total liability of the appellants as on today including up to date interest is Rs. 6,74,330/- (Rs.6,74,328.77 rounded off) out of which Rs.3,04,000/- (Rs.2,54,000/- + Rs.25,000/- + Rs.25,000/-) has been directed to be released today. With respect to the balance amount of Rs.3,70,330/-, the appellant in MAC.APP.676/2017 has handed over the post dated cheque for Rs.40,000/- to learned counsel for respondent No.1.

10. The appellant in MAC.APP.987/2017 undertakes to pay the balance amount for Rs. 3,30,330/- in four quarterly installments by transferring the same to the aforesaid savings bank account of respondent No.1. The undertaking of the appellant in MAC.APP.987/2017 is hereby accepted.

11. In the event of failure of the undertaking, the respondents would be entitled to initiate appropriate proceedings against the appellant in MAC.APP.987/2017 for recovery of the amount in accordance with the law as well as for violation of the undertaking.

12. Copy of this judgment be given *dasti* to learned counsels for the parties under signature of Court Master.

FEBRUARY 28, 2018 **J.R. MIDHA, J.**

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