* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of Decision: August 28, 2018*

\+ **MAC.APP. 934/2017 & CM 38490/2017**

SBI GENERAL INSURANCE CO LTD ..... Appellant
Through: Mr. Pankaj Singh Thakur, Advocate

versus

DIVYA RANI & ORS .....Respondents
Through: Mr. Navneet Goel, Advocate for respondents No.1 to 4

\+ **MAC.APP. 425/2018**

DIVYA RANI & ORS .....Appellants
Through: Mr. Navneet Goel, Advocate

versus

SBI GENERAL INSURANCE CO LTD & ORS .....Respondents
Through: Mr. Pankaj Singh Thakur, Advocate for respondent-Insurer

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above-captioned two appeals are directed against Award of 3rd August, 2017 vide which compensation of ₹27,40,000/- with interest @ 9% *per annum* has been awarded to Claimants. In the above-captioned first appeal, the Insurer seeks reduction in the quantum of compensation granted by the Tribunal, whereas in the above-captioned second appeal, enhancement of compensation is sought by Claimants. Since these two

appeals arise out of common Award of 3rd August, 2017, therefore, both these appeals have been heard together and are being decided by this common judgment. The facts as noted in opening paragraphs of the impugned Award are as under:-

> *"As per the case set up in the claim petition, Dinesh Kumar was going on his scooty bearing registration no. DL11 SD-5969 on aforesaid date and time, when the alleged offending vehicle being driven at high speed, in rash and negligent manner and without following traffic norms by respondent no.1, came from Sonipat side and hit against the scooty of deceased, as a result of which deceased fell down on the road and his head was crushed under the rear wheel of said truck. He died at the spot. FIR no.344/13 U/s 279/304-A IPC was registered at PS Jahangir Puri with regard to the said accident."*

2. The Motor Accident Claims Tribunal *(hereinafter referred to as 'the Tribunal')* has primarily relied upon the evidence of wife of *Dinesh,* who had died in a vehicular accident on 18th September, 2013. The Tribunal has also relied upon the evidence of PW3-Employer of deceased and the other evidence on record to award the compensation as noted hereinabove. *Dinesh* was aged 47 years on the day of this vehicular accident and as per the evidence of PW3-Employer of deceased, *Dinesh* was working as a Salesman and was earning ₹20,000/- per month. The Tribunal has not added anything towards *'future prospects'* while calculating the *'loss of dependency'* and since deceased was married, one-fourth has been deducted towards *'personal expenses'* of the deceased and multiplier of 13 has been applied and the *'loss of dependency'* has been assessed at ₹23,40,000/-. Compensation of ₹1,50,000/- each has

been awarded under the head of '*loss of love and affection*' and *'loss of consortium'*. Under the head of '*loss of estate*' and *'funeral expenses',* composite compensation of ₹1,00,000/- has been granted by the Tribunal. The break-up of compensation awarded by the Tribunal is as under:-

1) Loss of Dependency	=	*Rs.23,40,000/-*
2) Loss of Love and Affection	=	*Rs. 1,50,000/-*
3) Loss of Consortium	=	*Rs. 1,50,000/-*
4) Loss of Estate & Funeral Expenses	=	*Rs. 1,00,000/-*
Total	=	***Rs.27,40,000/-***

3. The challenge to the impugned award by learned counsel for Insurer is on the ground that income of the deceased has been erroneously assessed by the Tribunal, as there is no appointment letter, attendance register and receipt regarding payment of salary. It is submitted on behalf of Insurer that the salary of the deceased ought to be computed on minimum wages payable to a skilled worker. Reliance is placed by Insurer's counsel upon Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680 to seek reduction in the quantum of compensation granted by the Tribunal.

4. On the contrary, learned counsel for the Claimants refutes the aforesaid stand taken on behalf of Insurer and submits that the compensation granted by the Tribunal is inadequate and it needs to be suitably enhanced. It is pointed out by Claimants' counsel that in view of Supreme Court's Constitution Bench decision in *Pranay Sethi (supra),* addition of 30% towards *'future prospects'* ought to be made and so, the quantum of compensation granted by the Tribunal needs to be suitably

enhanced.

5. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that there is no challenge to the Salary Certificate of the deceased proved on record by PW3. The Tribunal has rightly taken the income of deceased to be ₹20,000/- per month. In view of Supreme Court's Constitution Bench decision in *Pranay Sethi (supra)*, addition of 25% towards *'future prospects'* has to be made and it is accordingly made. The *'loss of dependency'* is reassessed as under: -

₹20,000/- p.m. X 12 X 13 X 3/4 X 125/100 = ₹29,25,000/-

6. The compensation granted by Tribunal under the non-pecuniary heads needs to be brought in tune with the decision in *Pranay Sethi* (supra). Accordingly, compensation of ₹1,50,000/- granted by the Tribunal under the head of '*loss of love and affection*' is disallowed. Compensation of ₹1,50,000/- granted by the Tribunal under the head of *'loss of consortium'* is reduced to ₹40,000/- and composite compensation of ₹1,00,000/- granted under the head of *'loss of estate & funeral expenses'* is reduced to ₹30,000/-. Accordingly, the compensation payable to the Claimants is re-assessed as under:-

1) Loss of Dependency	=	₹29,25,000/-
2) Loss of Consortium	=	₹ 40,000/-
3) Loss of Estate & Funeral Expenses	=	₹ 30,000/-
Total	**=**	**₹29,95,000/-**

7. In light of the aforesaid, compensation of ₹27,40,000/- granted by the Tribunal, is enhanced to ₹29,95,000/- which shall carry interest @ 9%

per annum. The mode of disbursement of the compensation shall be as per the impugned Award. Registry is directed to refund the statutory deposit subject to deposit of enhanced compensation by the Insurer within six weeks from today and thereafter, the reassessed compensation be released to the Claimants in terms of this judgment but in the manner as indicated by the Tribunal in the impugned Award.

8. With aforesaid directions, both the appeals and the pending application are accordingly disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 28, 2018
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