* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Order: August 09, 2018

\+ **MAC.APP. 253/2017**

RENU & ORS .....Appellants

Through: Mr. Mrinal Harsh Vardhan, Advocate

versus

SHRIRAM GENERAL INSURANCE COMPANY LTD & ORS ..... Respondents

Through: Mr. Sameer Nandwani and Mr. Mohd. Shakim, Advocates for respondent No.1-Insurer
Mr. Hara Prasad Sahu, Advocate for respondents No.2 & 3

\+ **MAC.APP. 1026/2017**

SHEELA SINGH ..... Appellant

Through: Mr. Hara Prasad Sahu, Advocate

versus

RENU & ORS .....Respondents

Through: Mr. Mrinal Harsh Vardhan, Advocate for respondents No.1 & 2
Mr. Sameer Nandwani and Mr. Mohd. Shakim, Advocates for respondent No.3-Insurer

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

C.M.10095/2017 (delay) in MAC.APP. 253/2017

There is delay of 470 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.

C.M.42866/2017 (delay) in MAC.APP.1026/2017

There is delay of 708 days in filing the accompanying appeal.

As per last order, service is complete.

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. 253/2017
MAC.APP. 1026/2017 & CM 45078/2016

1. Impugned Award of 20th August, 2015 grants compensation of ₹15,56,600/- with interest @ 9% p.a. to *Claimants* on account of death of one Supervisor-*S.K. Mishra* aged 39 years in a vehicular accident on 27th July, 2010.

2. The above-captioned first appeal is by Claimants to seek enhancement in the quantum of compensation awarded. In the above-captioned second appeal, the owner of vehicle in question seeks exoneration from paying the awarded compensation. Since these two appeals arise out of common impugned Award, therefore, with the consent of learned counsel for the parties, these appeals have been heard together and are being decided by this order.

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

Award, is as under:-

> *"The facts, in brief, as mentioned in the petition are that on 27.07.2010 at about 8.15 AM, the deceased Sh Sunil Kumar Mishra and other staff of KEC International Ltd. were going from Barabanki to their workplace Ganauli on vehicle no. UP-43-1-0635 Bolero and when the said vehicle reached at National Highway, Mawai Chauraha, near the canal (within the jurisdiction of PS Mawai), one bus bearing no. UP-42-T-5722 came from Faridabad side which was driven by respondent no.1 in a negligent and rash manner and at a very fast speed and endangering the life of the persons on the road came and hit the Bolero with great force from its right side, whereas the Bolero was at its left side and following the traffic rules. It is stated that in the said accident six employees of KEC International Ltd. sustained grievous injuries. Their names are Rajesh Kumar, Vinod Kumar, Sunil Kumar, Anil Kumar, Mehboob Alam and Adinarayan. It is further submitted that all the injured were removed to Sahara Hospital, Lucknow with the help of local police and during the treatment Sh Sunil Kumar Mishra died on 31.07.2010. An FIR bearing no. 102/10 dated 29.07.2010 U/S 279/337/338/304A IPC was registered in PS Mawai, Faizabad, UP. It is submitted that the accident has been caused by rash and negligent act of respondent no.1/driver. It is stated that at the time of the accident the deceased Sh Sunil Kumar Mishra was working as Supervisor with KEC International Ltd., Lucknow and drawing consolidated salary of Rs.21650/- per month. It is further stated that a huge amount has been spent over the treatment of the deceased till 31.07.2010 and petitioners have suffered great mental pain, agony, loss of love and affection, loss of earning, loss of mental support and hence*

the present petition for a compensation of Rs.80 lacs."

4. 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:-

Sl. No.	**Compensation under various heads**	**Amount awarded**
1	Loss of dependency	₹14,21,600/-
2	Loss of love & affection	₹50,000/-
3	Funeral expenses	₹25,000/-
4	Loss of consortium	₹50,000/-
5	Loss of estate	₹10,000/-
	Total	**₹15,56,600/-**

5. Learned counsel for Claimants submits that the Tribunal has erred in assessing the *'loss of dependency'* while taking the minimum wages of a graduate. It is pointed out that as per Salary Slip *(Ex.PW-2/B)*, the income of deceased on the day of accident was ₹21,650/- per month and so, *'loss of dependency'* ought to be calculated on its basis.

6. On behalf of owner of vehicle in question, it is submitted that as per first *'Insurance Cover Note' (Ex.R2W1/1)*, the period of insurance was from 20th July, 2010 to 19th July, 2011. It is submitted by learned counsel for owner that the premium in respect of first *'Insurance Cover Note'* was paid in cash and *'Insurance Cover Note'* is itself a receipt issued in token of the said payment. So, it is submitted that the liability to pay the awarded compensation is of the Insurer and not of the owner of the vehicle in question. It is submitted that the Tribunal has erred in relying upon the second *'Insurance Cover Note' (Ex.R3W1/2)*, and the intimation of its cancellation was given to the owner on 5th September, 2010. Learned counsel for owner submits that the second *'Insurance*

Cover Note' is forged and fabricated and in view of first *'Insurance Cover Note'*, the liability is of the Insurer to pay the awarded compensation.

7. On the contrary, learned counsel for Insurer supports the impugned Award and submits that the compensation awarded is just and fair and so these appeals deserve to be dismissed.

8. Upon hearing and on perusal of impugned Award and the evidence on record, I find that the Tribunal has erred in not relying upon the Salary Slip *(Ex.PW-2/B)* of deceased, which discloses that he was earning ₹21,650/- per month. The *'appointment letter' (Ex.PW-2/A)* of deceased reveals that the nature of employment of deceased was contractual. The annual income of deceased minus tax is ₹2,48,200/-. The Tribunal has erred in making addition of 50% towards *'future prospects'* as deceased was aged 39 years on the day of the accident and his employment was of contractual nature. In view of Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.,* (2017) 16 SCC 680, the addition towards *'future prospects'* has to be 40%. Accordingly, the *'loss of dependency'* is reassessed as under: -

₹2,48,200/- p.a. X 140/100 X 15 X 3/4 = ₹39,09,150/-

9. As regards compensation granted under the *'non pecuniary heads'*, it 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'* is disallowed. *'Funeral expenses'* are reduced from ₹25,000/- to ₹15,000/-. However, compensation granted under the head of *'loss of estate'* is increased from

₹10,000/- to ₹15,000/- and compensation granted under the head of *'loss of consortium'* is reduced from ₹50,000/- to ₹40,000/-.

10. In light of the aforesaid, the compensation payable to claimants is reassessed as under:-

Sl. No.	**Compensation under various heads**	**Amount awarded**
1	Loss of dependency	₹39,09,150/-
2	Funeral expenses	₹15,000/-
3	Loss of consortium	₹40,000/-
4	Loss of estate	₹15,000/-
	Total	**₹39,79,150/-**

11. In the light of aforesaid, total compensation payable to claimants is enhanced from ₹15,56,600/- to ₹39,79,150/-. The modified compensation shall carry interest @ 9% *per annum*.

12. On the liability aspect, I find that the Tribunal has erred in relying upon the second *'Insurance Cover Note'* as it does not cover the date on which the accident in question took place. The first *'Insurance Cover Note'* relied upon by the owner of the vehicle in question clinches the issue. On its bare perusal, I find that this *'Insurance Cover Note'* is duly signed by the authorized signatory and as per this *'Insurance Cover Note'*, premium was received in cash. Upon scrutiny of the evidence of owner *(R2W1)*, I find that there is no worthwhile cross-examination of this witness in respect of first *'Insurance Cover Note'*, which covers the period of accident in question. The Legal Officer of the Insurer has deposed only in respect of second *'Insurance Cover Note'* which does not cover the period in question. The evidence in respect of first *'Insurance Cover Note'* remains unassailable and deserves to be relied upon. The

Tribunal has erred in not doing so. Impugned Award is hereby set aside on the liability aspect with direction that the modified compensation as awarded by this Court shall be payable by Insurer and not the owner of insured vehicle. The enhanced compensation be deposited by Insurer with Registrar General of this Court within six weeks and it be disbursed to Claimants in the ratio and manner, as indicated in the impugned Award.

13. With aforesaid directions, the above-captioned two appeals and the pending application are disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 09, 2018
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