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

Date of Decision: July 31, 2018

\+   **MAC.APP. 993/2017 & CM 41194/2017**

SHRIRAM GENERAL INSURANCE CO LTD ..... Appellant
Through: Mr. Sameer Nandwani, Advocate

versus

RENU SHARMA & ORS .....Respondents
Through: Mr. Varun Sarin and Mr. Shailendra Singh, Advocates

\+   **MAC.APP. 1093/2017**

RENU SHARMA & ORS .....Appellants
Through: Mr. Varun Sarin and Mr. Shailendra Singh, Advocates

versus

ANGREJ SINGH & ANR (SHRIRAM GENERAL INS CO LTD) .....Respondents
Through: Mr. Sameer Nandwani, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above-captioned two appeals are directed against impugned Award of 26th August, 2017 vide which *Motor Accident Claims Tribunal-01, South East District/Saket Court Complex, New Delhi (hereinafter referred to as 'the Tribunal')* has awarded compensation of ₹18,25,600/- with interest @ 9% *per annum* to Claimants on account of death of one Junior Engineer-*Sanjay Kumar* aged about 50 years and 5 months in a vehicular accident on 21st February, 2017. The above-captioned first appeal is by the Insurer to seek reduction of the quantum of compensation

granted, whereas in the above-captioned second appeal, Claimants seek enhancement in the quantum of compensation granted by the Tribunal.

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

> *"Brief facts of the case are that on 21.02.2017, deceased was travelling from Pilibhit to Khatima on motorcycle bearing registration No. UK-06AF-6735. At about 07.25 PM, when he reached near Village Bithra Adda, PS Nuria, offending truck bearing registration No. PB-13D-9471, being driven by respondent No. 1 in a rash and negligent manner, came on wrong side and hit above-said motorcycle of deceased due to which deceased suffered fatal injuries and he died on the spot."*

3. With the consent of learned counsel for the parties, the above-captioned appeals have been heard together and are being decided by this common judgment.

4. On the basis of evidence led, the Tribunal has granted compensation of ₹18,25,600/- to Claimants and its break-up is as under: -

Sr. No.	**Description**	**Amount**
1	Loss of Dependency	₹14,25,600/-
2	Funeral Expenses	₹50,000/-
3	Loss of Love & Affection	₹1,50,000/-
4	Loss of Estate	₹50,000/-
5	Loss of Consortium	₹1,50,000/-
	Total	**₹18,25,600/-**

5. The challenge to impugned Award by learned counsel for Insurer is on the ground that the Tribunal did not have territorial jurisdiction to entertain the claim petition in respect of death of *Sanjay Kumar* as he was

resident of Uttarakhand and the accident in question had taken place in Uttar Pradesh. It is pointed out by learned counsel for Insurer that FIR regarding this vehicular accident was registered against an unknown person and the insured vehicle was not found at the spot and that the alleged eye-witness-*Mukesh Kumar (PW-3)* is a planted witness. It is submitted that the truck in question i.e. the insured vehicle, was not involved in the accident. As regards compensation granted under the *'non-pecuniary heads'*, it is submitted by Insurer's counsel that it needs to be brought in tune with Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680. Thus, modification of impugned Award is sought by Insurer's counsel.

6. On the other hand, learned counsel for Claimants refutes the aforesaid stand taken by Insurer's counsel and relies upon Supreme Court's decision in *Malati Sardar v. National Insurance Company Limited and Others,* (2016) 3 SCC 43 to submit that in cases like the instant one, the jurisdiction lies where the office of the Insurer is located. It is submitted on behalf of Claimants that the quantum of compensation granted by the Tribunal is inadequate as proper multiplier has not been applied and the income of deceased as per Salary Certificate has not been made the basis to assess the *'loss of dependency'*. Reliance is also placed by Claimants' counsel upon Supreme Court's decision in *Pranay Sethi (supra)* to claim addition of 30% towards *'future prospects'*. Thus, enhancement of compensation awarded is sought by Claimants.

7. Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that the office of Insurer is located in

Delhi and so, in view of Supreme Court's decision in *Malati Sardar (supra)*, the Tribunal had the jurisdiction to entertain the claim petition. On perusal of evidence of eye-witness *(PW-3),* I find that there is no basis to conclude that this witness *(PW-3)* is planted. So far as application of multiplier is concerned, I find that Supreme Court in *Sarla Verma (Smt.) & Ors. Vs. Delhi Transport Corporation & Anr.,* (2009) 6 SCC 121 has clarified that the applicable multiplier for the age group of 46-50 is of 13, whereas for the age group of 51-55, it is of 11. Since deceased was aged about 50 years and 5 months on day of the accident, therefore, applicable multiplier would be of 12. In view of Supreme Court's decision in *Pranay Sethi (supra)*, addition towards *'future prospects'* has to be 15%.

8. As per the salary slip *(Ex.PW1/6)* of deceased, he was granted Special Allowance of ₹10,700/-, which the Tribunal has excluded while assessing his monthly income. There is no basis to do so. While assessing the income of deceased, Special Allowance has to be taken into consideration as the deceased was getting it. Thus, the annual income of deceased is assessed as ₹3,22,800/- (₹26,900/-p.m. X 12) and in view of Form-16 *(Ex.PW2/24)* on record, no tax is to be deducted due to investments made by deceased. Accordingly, the *'loss of dependency'* is reassessed as under: -

₹26,900/- X 12 X 2/3 X 115/100 X 12 = ₹29,69,760/-

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 and

'funeral expenses' are reduced from ₹50,000/- to ₹15,000/-. Similarly, compensation granted under the head *'loss of estate'* is also reduced from ₹50,000/- to ₹15,000/- and under the head *'loss of consortium'* is also reduced from ₹1,50,000/- to ₹40,000/-.

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

Sr. No.	**Description**	**Amount**
1	Loss of Dependency	₹29,69,760/-
2	Funeral Expenses	₹15,000/-
4	Loss of Estate	₹15,000/-
5	Loss of Consortium	₹40,000/-
	Total	**₹30,39,760/-**

11. Consequentially, total compensation payable to Claimants is enhanced from ₹18,25,600/- to ₹30,39,760/-, which shall carry interest @ 9% *per annum*. The enhanced compensation be deposited by Insurer with the Tribunal within six weeks and thereafter, it be disbursed to Claimants forthwith in the ratio and manner as indicated in the impugned Award. Statutory deposit, if any, be refunded to Insurer.

12. With aforesaid directions, the above-captioned appeals and the application are disposed of.

(SUNIL GAUR)
JUDGE

JULY 31, 2018
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