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

% ***Date of decision : February 12, 2018***

\+ **MAC.APP. 864/2015, CM Nos.26676/2015 & 32701/2015**

RELIANCE GENERAL INSURANCE COMPANY ..... Appellant
Through: Ms.Neerja Sachdeva, Advocate

versus

KIRAN DEVI & ORS ..... Respondents
Through: Mr.S.N.Parashar, Advocate for R-5 and R-6

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned award of 21st July, 2015 grants compensation of ₹13,16,896/- with interest @ 9% per annum to first four respondents-claimants on account of death of one Roopesh, S/o Umesh Chand who had suffered fatal injuries in a vehicular accident on 1st May, 2008. The breakup of the compensation granted by Motor Accidents Claim Tribunal (hereinafter referred to as 'the Tribunal') is as under:-

1. Loss of dependency:	*₹ 8,71,896/-*
2. Loss of love & affection: *(Rs.1 lakh each to petitioners no.1 to 4)*	*₹ 4,00,000/-*
3. Funeral expenses:	*₹ 25,000/-*
4. Loss of estate:	*₹ 10,000/-*
5. Loss of consortium:	*₹ 10,000/-*
Total compensation:	*₹13,16,896/-*

2. The factual background of this case already stands noticed by the learned Tribunal in the opening paragraphs of the award of 21st July, 2015 and hence needs no reproduction. Suffice to note that deceased was aged 27 years on the day of the accident and his income has been assessed by the Tribunal on minimum wages of ₹3,799/- per month of a semi-skilled labourer and an addition of 50% has been made towards future prospects and after deducting 1/4th towards the personal expenses of the deceased and by applying multiplier of 17, the loss of dependency has been assessed as ₹4,274x17x12 = ₹8,71,896/-.

3. Learned Tribunal has found that the driver of the offending vehicle in question was possessing two driving licences but it could not be established that these driving licences were fake and so recovery rights have not been granted to appellant-Insurer. Impugned award gives an option to appellant/Insurer to recover the compensation paid if it comes to a conclusion that the driving licences in question were fake. It is matter of record that the driver of the offending vehicle in question had obtained one driving licence from Motor Vehicle Department in Mathura (U.P.) and another one from Motor Vehicle Department of Fatehgarh in Farrukhabad and one of the driving licence was recovered in the police case, whereas the driver of offending vehicle in question had stepped into the witness box and had relied upon the driving licence issued by Motor Vehicle Department in Mathura (U.P.). As per evidence of appellant's witness-Gaurav Ahuja, R-3W1/A, the driving licence issued by licensing authority in Mathura was not valid for driving a tractor with attached trolley and as per this witness,

Section 6 of Motor Vehicles Act, 1988 prohibits holding of two driving licences at a time. On the basis of the evidence led, impugned award has been rendered.

4. Learned counsel for appellant-Insurer assails the impugned award on the ground that clear cut recovery rights ought to have been granted to appellant because the driver of the offending vehicle was found in possession of two driving licences which is illegal. Learned counsel for appellant-Insurer submits that the minimum wages of an unskilled labourer ought to have been made the basis to assess the income of the deceased and deduction of $1/3^{rd}$ towards personal expenses to deceased ought to have been made because father of deceased was not dependant upon him. It is submitted that in view of the Constitution Bench decision of Supreme Court in *National Insurance Co.Ltd. Vs. Pranay Sethi & Ors.* 2017 ACJ 2700 addition of 40% only is to be made towards the future prospects and the non-pecuniary damages ought to be confined to ₹70,000/- only and so the impugned award deserves to be suitably modified.

5. Learned counsel for respondents-driver and owner of offending vehicle in question submits that there is no clear finding of any of the driving licences of driver of vehicle in question being fake and since the driver of vehicle in question has relied upon the driving licence issued by the licensing authority in Mathura which has been found to be genuine, therefore no recovery rights ought to be granted to appellant. It is further submitted that deceased was self-employed as he was selling samosas and pakoras etc. and so he has been rightly considered to be a semi-skilled worker and that the compensation has been rightly assessed in light of then

prevalent legal position and so this appeal deserves dismissal. Respondent-claimants are unrepresented despite being served in this appeal.

6. Upon hearing and on perusal of the impugned award, the evidence on record and the decision cited, I find that appellant-Insurer itself has relied upon the driving licence issued by the licensing authority in Mathura and so, appellant cannot derive any benefit out of the offence committed by the driver of the vehicle in question as the offence of holding two driving licences at a time is punishable under Section 182 of the Motor Vehicles Act, 1988 and thus it gives no justification to grant recovery rights to appellant. Since deceased was engaged in making and selling of samosas and pakoras etc. therefore he has been rightly considered to be a semi-skilled worker. Reference by appellant's counsel to Supreme Court decision in *Sarla Verma (Smt.) & Ors. Vs. Delhi Transport Corporation & Anr.* (2009) 6 SCC 121, to exclude father of deceased as dependant is of no assistance for the reason that there is no cross-examination of the claimants regarding there being no dependency of father of deceased on him. So far as addition of 50% towards future prospects of deceased is concerned, I find that Supreme Court in *Pranay* Sethi's case (supra) has ruled that in case of self-employed person in the age bracket in question, addition of 40% is to be made towards future prospects.

7. So far as non-pecuniary damages are concerned, I find that in view of Supreme Court decision in *Pranay* Sethi's case (supra), no compensation under the head of '*Loss of Love and Affection*' is to be granted and hence grant of ₹4,00,000/- as compensation under this head is disallowed and the funeral expenses of ₹25,000/- granted by the Tribunal are reduced to

₹15,000/- but the compensation granted under the head of '*Loss of Estate*' is enhanced from ₹10,000/- to ₹15,000/- and the compensation granted under the head of '*Loss of Consortium*' is increased from ₹10,000/- to ₹40,000/-.

8. While taking the income of the deceased to be ₹3,799/- per month and by adding 40% towards future prospects and by subtracting 1/4th towards personal expenses of the deceased, the income of deceased is re-assessed at ₹3,990/- per month. By applying multiplier of 17, the loss of dependency is re-assessed as ₹3,990x17x12 = ₹8,13,960/-. Thus, the compensation payable to the legal heirs of deceased is re-assessed as under:-

1.	*Loss of dependency:*	₹8,13,960/-
2.	*Funeral expenses:*	₹ *15,000/-*
3.	*Loss of estate:*	₹ *15,000/-*
4.	*Loss of consortium:*	₹ *40,000/-*
	Total compensation:	₹8,83,960/-

9. In light of the aforesaid, the compensation granted by the Tribunal is reduced from ₹13,16,896/- to ₹8,83,960/- which shall carry interest @ 9% per annum and the modified compensation be disbursed in the same mode and ratio as already indicated by the Tribunal. Registry is directed to refund the excess deposit and statutory deposit to appellant and to release the compensation to the claimants as per this judgment.

10. With aforesaid directions, this appeal and the applications stand disposed of.

(SUNIL GAUR)
JUDGE

FEBRUARY 12, 2018
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