

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

Date of Decision: May 14, 2018

+ **MAC APP. 992/2015 & CM APPL. 14657/2016**

HDFC ERGO GENERAL INSURANCE CO.LTD..... Appellant

Through: Mr. A K Soni and Mr. Pavan
Kumar Vashishth, Advocates

versus

MOMINA KHATUN & ORS.Respondents

Through: Mr. S K Rai, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. One Mohd. Nazrul, son of Mohd. Jhoru, aged 21 years, had died in a vehicular accident on 28th May, 2010 and vide impugned Award of 30th September, 2015, compensation of ₹19,41,864/- with interest @ 9% per annum has been awarded to the respondent-Claimants by the Motor Accident Claims Tribunal (hereinafter referred to as '*the Tribunal*').

2. The facts emerging from the impugned Award are as under:-

"....that Mohd. Nazrul S/o Mohd. Jhoru died in a motor vehicular accident dated 28.05.2010, involving vehicle bearing registration no. HR-46B-6273, being driven by respondent no.1. It has been claimed in the petition that on 28.05.2010 at about 01.00 PM, the petitioner no. 4 and his elder brother

were going to M/s. Dani Enterprises Company, IMT Manesar, sitting in three wheeler bearing no. HR-47B-1714 along with other occupants. It is stated that the driver of the offending vehicle No. HR-46B-6273 had parked his vehicle in the middle of the road without any indication or warning of the fact that the vehicle is not in the working condition. It is stated that as the Auto reached near AG Company IMT Manesar the driver of the three wheeler dashed with the dumper No. HR46B-6273 as he could not understand that offending vehicle is not moving, resulting into the death of Mohd. Nazrul at the spot and injury to other occupants.... ”

3. The Tribunal has relied upon evidence of deceased's mother-Smt. Momina Khatoon (PW-1), deceased's brother-Nashir Alam (PW-2) to render the impugned Award. The Tribunal has assessed the income of deceased on minimum wages of a skilled person at ₹6,448/- and has made addition of 50% towards '*future prospects*' and after deducting 1/4th towards '*personal expenses*' and by applying the multiplier of 18, '*loss of dependency*' has been assessed at ₹15,66,864/-.

4. Under the head of '*loss of Estate*', compensation of ₹1 lac has been awarded. On account of '*loss of love and affection*' a sum of ₹2,50,000/- has been awarded by the Tribunal to the respondents-Claimants. The '*funeral expenses*' of ₹25,000 have been also granted by the Tribunal.

5. The challenge to impugned Award by learned counsel for the appellant-Insurer is on the ground that deceased was travelling in a three-wheeler which had dashed against a dumper which was stationery and so, the liability to pay the compensation is of the driver of the three-wheeler

and not of the driver and owner of the dumper, which was insured with the appellant. It is next submitted that deceased was a bachelor and so, deduction of 50% ought to be there on account of the personal expenses of the deceased and not 1/4th. Reliance is placed upon Supreme Court judgment in *National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.*, (2017) 16 SCC 680 to submit that addition of 40% and not 50% towards 'future prospects' ought to have been granted.

6. It is lastly submitted by counsel for appellant that no compensation under the head of 'loss of love and affection' is payable in view of the Supreme Court decision in *Pranay Sethi* (supra) and in light of the said decision, the compensation under the head of 'Loss of Estate' ought to be ₹15,000/- and 'funeral expenses' of not more than ₹15,000/- can be awarded and so, modification of the impugned award is sought.

7. On the contrary, learned counsel for the respondents-Claimants supports the impugned Award and submits that the dumper was stationery in the middle of the road and there was no indication that the dumper was out of order and so, the negligence was of driver of the dumper. It is submitted that deduction of 1/4th towards 'personal expenses' is justified in view of the evidence of Momina (PW-1). Thus, it is submitted that the compensation granted is just and proper and so, this appeal deserves dismissal.

8. Upon hearing and on perusal of the impugned Award, evidence on record and the decision cited, I find that the insured dumper was stationery in the middle of the road without any indication that it was out

of order and in view of the un-rebutted evidence of Nashir Alam (PW-2), it is concluded that the negligence was of driver of the dumper and the accident in question had not taken place due to contributory negligence of driver of three wheeler scooter.

9. Regarding deduction of 1/4th towards personal expenses of the deceased, I find that in view of Supreme Court's decision in *Sarla Verma (Smt.) and Others v. Delhi Transport Corporation and Another* (2009) 6 SCC 121, the deduction in a case of a bachelor has to be 50%. In view of the Supreme Court decision in *Pranay Sethi*, (supra) grant of compensation under the head of 'loss of love and affection' by the Tribunal is disallowed and the compensation under the head of 'Loss of Estates' is reduced from ₹1 lac to ₹15,000 and the 'funeral expenses' are also reduced from Rs. 25,000/- to ₹15,000 /-.

10. In light of the Supreme Court decision in *Pranay Sethi* (supra), the addition towards 'future prospects' has to be 40% and not 50%, as granted by the Tribunal.

11. In view of the aforesaid, the 'loss of dependency' is reassessed as under:-

$$\begin{aligned} & ₹6448 \times 12 = ₹77,376 + ₹30,950 \text{ (addition of 40\%)} = ₹1,08,326/- \\ & \text{minus } ₹54,163/- \text{ (50\% deduction towards personal expenses)} = \\ & ₹54,163/- \times 18 \text{ (multiplier)} = ₹9,74,934/- \end{aligned}$$

12. Compensation of ₹15,000 each is payable under the heads of 'Loss of Estate' and 'funeral expenses'. In light of the aforesaid, the total

compensation payable to the respondent-Claimants is re-assessed as under :-

Head of Compensation	Amount (in ₹)
Loss of dependency	9,74,934/-
Loss of Estate	15,000/-
Funeral expenses	15,000/-
Total	10,04,934/-

13. Consequentially, the compensation of ₹19,41,864/- awarded to respondent-Claimants by the Tribunal stands reduced to ₹10,04,934/-. Excess deposit as well as statutory deposit be refunded to the appellant and the compensation as per the judgment be released forthwith to respondents-Claimants in the manner and ratio already indicated in the impugned Award.

14. With aforesaid directions, this appeal and the application stands disposed of.

(SUNIL GAUR)
JUDGE

MAY 14, 2018

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