* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: October 11, 2018

\+ MAC.APP. 995/2015

BHARTI AXA GENERAL INSURANCE CO LTD. ..... Appellant
Through: Mr. Vikas Bhadana, Advocate

Versus

POONAM & ORS. ..... Respondents
Through: Mr. Vijay Pal Sharma & Mr. Santosh Kumar Sahu, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 11th August, 2015 grants compensation of ₹15,24,960/- with interest @ 9% per annum to respondents-*Claimants* on account of death of Florist- *Parvesh Kumar,* aged 39 years, in a vehicular accident on 29th August, 2013.

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

> *"Brief facts of the case are that on 29/08/2013 at about 01:45 a.m. when the deceased alongwith his friend Sh. Vijay was going to Balaji Action Hospital to see his one friend from Manogolpuri, Delhi on motorcycle No.DL-8S-ND-8759, then the offending vehicle No. DL-8C-AE-0138 (Santro GLX car) which was being driven by its driver/respondent No.1 in a rash and negligent manner hit the motor cycle of the deceased. As a consequence thereof,*

deceased fell down and suffered fatal injuries and later on he succumbed to injuries on 03/09/2013. In total the petitioners have claimed a total sum of Rs.30,00,000/- on account of compensation."

3. To render the impugned Award, the *Motor Accident Claims Tribunal, (hereinafter referred to as 'the Tribunal')* has relied upon evidence of Claimants and other evidence on record. The Tribunal has assessed the income of deceased on minimum wages of ₹7,722/- payable to an unskilled person and after making addition of 50% towards *"future prospects"* and deduction of 1/3 towards *"personal expenses"* and by applying multiplier of 15, the *"loss of dependency"* of deceased has been assessed at ₹13,89,960/-. The breakup of compensation awarded by the Tribunal to the Claimants is as under:-

1	Loss of dependency	₹13,89,960/-
2	Funeral expenses	₹25,000/-
3	Loss of consortium	₹1,00,000/-
4	Loss of estate	₹10,000/-
	Total	₹15,24,960/-

4. The challenge to the impugned Award by counsel for *Bharti AXA General Insurance Company Ltd. (henceforth referred to as the "Insurer")* is on the ground that the Tribunal has erred in making addition of 50% towards *"future prospects"*. Reliance is placed upon Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680 to submit that addition of 40% towards *"future prospects"* ought to be made. It is submitted that the compensation granted under the *"non-pecuniary heads"* needs to be brought in tune with Supreme Court's Constitution Bench decision in

Pranay Sethi (Supra).

5. On the contrary, learned counsel for *Claimants* refutes the aforesaid stand taken on behalf of the Insurer and submits that the compensation granted by the Tribunal is just and fair. So, dismissal of this appeal is sought.

6. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that in terms of Supreme Court's Constitution Bench decision in *Pranay Sethi (Supra)*, addition towards *"future prospects"* ought to be 40%. Accordingly, the *"loss of dependency"* of deceased is re-assessed as under

₹7,722/- x 12 x 140/100 x 2/3 x 15 = ₹12,97,296/-

7. The compensation granted by the Tribunal under the *'non pecuniary heads'*, needs to be brought in tune with Supreme Court's Constitution Bench decision in *Pranay Sethi (supra).* Accordingly, *'funeral expenses'* granted by the Tribunal are reduced from ₹25,000/- to ₹15,000/-. The compensation granted under the head *'loss of consortium'* is also reduced from ₹1,00,000/- to ₹40,000/-. However, compensation granted by the Tribunal under the head of *"loss of estate"* is increased from ₹10,000/- to ₹15,000/-. In light of the aforesaid, the compensation payable to Claimants is re-assessed as under:-

1	Loss of dependency	₹12,97,296/-
2	Funeral expenses	₹15,000/-
3	Loss of consortium	₹40,000/-
4	Loss of estate	₹15,000/-
Total		₹13,67,296/-

8. Consequentially, compensation granted by the Tribunal to

Claimants is reduced from ₹15,24,960/- to ₹13,67,296/-. The modified compensation shall carry interest @ 9% *per annum* and it be released to the respondents-*Claimants* forthwith in the ratio already indicated in the impugned Award. Statutory deposit alongwith excess deposit be refunded to the appellant-Insurer.

9. While modifying the impugned Award to the aforesaid extent, this appeal is accordingly disposed of.

(SUNIL GAUR)
JUDGE

OCTOBER 11, 2018
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