

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

Date of Decision: July 13, 2018

+ **MAC.APP. 1020/2015 & C.M. 32600/2015**

THE ORIENTAL INSURANCE CO LTDAppellant

Through: Mr. J.P.N. Shahi, Advocate

Versus

SABRA & ORS.Respondents

Through: Mr. Kartikay Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 17th October, 2015 grants compensation of ₹14,58,384/- with interest @ 9% p.a. to respondents-claimants on account of death of one- *Chand Mohd.* in a vehicular accident on 5th October, 2014.

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

“The case of the petitioners is that on 05/10/2014 at about 05:15 p.m. the deceased was standing at ISBT Kashmere Gate behind the offending vehicle i.e. bus bearing No. HR-66-7524. The offending vehicle was parked at the Counter No.28. Suddenly the driver of the offending vehicle reversed the vehicle in very rash and negligent manner and at very high speed without caring for the deceased and hit the deceased. Due to the impact the deceased fell down on the

ground. The driver without even caring about the deceased fled away from there. One person namely Bhramanand Mishra who was available there took the deceased to the ambulance. The deceased was taken to Aruna Asaf Ali Hospital, where MLC No.3751/14 was recorded in respect of the deceased and the deceased was declared brought dead at 06:15 p.m. The post mortem was conducted on the dead body of the deceased at Aruna Asaf Ali Hospital vide post mortem 1830/14.”

3. 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:-

1.) Loss of dependency	:	₹13,98,384/-
2.) Love and affection	:	₹25,000/-
3.) Funeral expenses	:	₹25,000/-
4.) Loss of estate	:	₹10,000/-

Total : ₹14,58,384/-

4. The challenge to impugned Award by learned counsel for Insurer is on the ground that addition of 50% towards “*future prospects*” awarded by the Tribunal is on the higher side and in view of the Constitution Bench decision of Supreme Court in *National Insurance Co.Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680, addition of 40% only is to be made towards the “*future prospects*” and compensation granted under the non-pecuniary heads ought to be suitably reduced in light of Constitution Bench decision of Supreme Court in *Pranay Sethi (supra)*.

5. On the contrary, learned counsel for Injured supports the impugned Award and submits that the compensation awarded is just and fair. So, it is submitted by learned counsel for respondents that this appeal deserves

to be dismissed.

6. Upon hearing and on perusal of impugned Award and material on record, I find that in view of Constitution Bench decision of Supreme Court in *Pranay Sethi (supra)*, addition towards “*future prospects*” ought to be 40% and not 50%. In view of Supreme Court’s decision in *Pranay Sethi (supra)*, compensation granted by the Tribunal under the head of ‘*loss of love & affection*’ is disallowed and “*funeral expenses*” are reduced from ₹25,000/- to ₹15,000/-. However, compensation granted under the head “*loss of estate*” is increased from ₹10,000/- to ₹15,000/-.

7. In light of the aforesaid, the compensation under the head “*loss of dependency*” is re-calculated as under:-

$$₹8,632/-p.m. \times 12 \times 18 \times 140/100 \times 50 /100 = ₹13,05,148/-$$

8. Accordingly, the compensation payable to respondents-claimants is reassessed as under:-

S.No.	Description	Amount
1.	Loss of Dependency	₹13,05,148/-
2.	Funeral Expenses	₹15,000/-
4.	Loss of Estate	₹15,000/-
	Total	₹13,35,148/-

9. Consequentially, the compensation amount payable stands reduced from ₹14,58,384/- to ₹13,35,148/-. The modified compensation be released forthwith to Injured in the manner and ratio as indicated in the impugned Award. Statutory deposit along with excess deposit, if any, be refunded to appellant-Insurer.

10. With aforesaid directions, this appeal and application are disposed of.

(SUNIL GAUR)
JUDGE

JULY 13, 2018

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