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

% **Date of Decision: 13th March, 2019**

\+ MAC.APP. 459/2018

SHALINI & ANR ..... Appellants
Through: Ms.Sarika Goel, Advocate

versus

KULDEEP SINGH & ORS (HDFC ERGO GENERAL INSURANCE CO LTD) ..... Respondents
Through: Mr.Pankaj Singh, Thakur, Advocate for Mr.Sameer Nandwani, Advocate for HDFC.

J U D G E M E N T (ORAL)

1. The appellants have challenged the award of the Claims Tribunal whereby compensation of Rs.12,28,000/- has been awarded to the claimants. The appellants seek enhancement of the award amount.

2. On 22nd May, 2015 at about 11.30-12.00 A.M., Deepak along with Pawan, Sunny, Ravish and respondent no.1 were travelling in a Duster car bearing No.DL-13C-6613 being driven by respondent No.1. Respondent No.1 was driving the car rashly and negligently because of which he lost control over the car and hit the car against a road divider near Dharmshila Hospital Road after which the car hit an ambulance and thereafter, the car fell in the Ghazipur Canal. The accident resulted in the death of Deepak and Pawan and injuries to the driver and two other occupants of the car.

3. The deceased, Pawan was aged 18 years at the time of the accident and was doing a private job in Delhi. It was claimed that the deceased was earning Rs.15,000/- per month. However, in the absence of any

documentary proof of income, the Claims Tribunal took the minimum wages of Rs.9,048/-, deducted 50% towards his personal expenses and applied the multiplier of 18 to compute the loss of dependency as Rs.9,78,000/-. The Claims Tribunal awarded Rs.1,50,000/- towards loss of love and affection, Rs.50,000/- towards loss of estate and Rs.50,000/- towards funeral expenses. The total compensation awarded is Rs.12,28,000/-.

4. Learned counsel for the appellant urged at the time of the hearing that the future prospects have not been taken into consideration in terms of principles laid down in ***National Insurance Co. Limited v. Pranay Sethi,*** 2017 SCC Online SC 1270.

5. Learned counsel for respondent No.3 submits that compensation for loss of love and affection awarded by the Claims Tribunal is no more a permissible head in terms of principles laid down in ***Pranay Sethi*** (supra). It is further submitted that the compensation for loss of estate and funeral expenses be reduced to Rs.15,000/- each in terms of ***Pranay Sethi*** (supra).

6. There is merit in the contentions urged by learned counsels for both the parties.

7. The appellants are entitled to addition of 40% towards future prospects. The compensation of Rs.1,50,000/- towards loss of love and affection awarded by the Claims Tribunal is no more a permissible head and is therefore, set aside. The compensation for loss of estate and funeral expenses are reduced to Rs.15,000/- each.

8. Taking the income of the deceased as Rs.9,048/-, adding 40% towards future prospects, deducting 50% towards personal expenses and applying the multiplier of 18, the loss of dependency is computed as Rs.13,68,057.6. Adding Rs.15,000/- towards loss of estate and Rs.15,000/- towards funeral

expenses. The total compensation is computed as Rs.13,98,057.6, rounded off to Rs.13,98,100/-.

9. The appeal is allowed and compensation amount is enhanced from Rs. Rs.12,28,000/- to Rs.13,98,100/- along with interest @ 9% per annum from the date of institution of the claim petition i.e. 20th July, 2015.

10. The Claims Tribunal has granted recovery rights to the insurance company to recover the awarded amount from the insured on the ground that the Rakesh was driving the offending vehicle without a driving licence. However, the Claims Tribunal ignored the defence of the owner of the offending vehicle which was duly proved by the testimony of R2W1, R2W2, R2W3 and R2W4. According to the registered owner of the offending vehicle, the offending vehicle was provided to Mr.Manish Kumar Garg who had employed Rakesh as driver in October, 2014. Rakesh used to take the vehicle to his residence as there was no parking space at the residence of Manish. Rakesh employed Kuldeep (respondent No.1) for the purpose of cleaning of the offending vehicle in December, 2015. Kuldeep unauthorisedly and without the knowledge of Manish and Rakesh, took the key of the offending vehicle on the pretext of cleaning and was driving the offending vehicle at the time of the accident. According to the owner, there was no breach of any terms and conditions of the insurance policy as the registered owner did not handover the offending vehicle for driving to Kuldeep nor permitted him to drive the vehicle. The registered owner examined Manish Kumar Garg as R2W1, Geeta Devi, wife of Rakesh Kumar as R2W2, Sunil Chandel as R2W3 and Rakesh as R2W4 who proved that the registered owner handed over the vehicle to R2W1 who appointed Rakesh to drive the offending vehicle and Rakesh Kumar was having a valid

driving licence at the time of the accident. Kuldeep took the keys of the offending vehicle from R2W2 on 22nd May, 2015 at 10.30 P.M. for clean the vehicle in the morning but unauthorizedly took away the vehicle and was driving the same at the time of the accident. However, there was no violation of any terms of conditions of the offending vehicle by registered owner.

11. It is well settled that the insurance company has to prove deliberate breach of the terms of conditions in order to claim the recovery rights. Reference by made to ***National Insurance Co. Ltd v. Swaran Singh,*** (2004) 3 SCC 297. In the present case, there is no deliberate violation of the terms of conditions of the policy by the insured. In that view of the matter, the insurance company is not entitled to recovery rights to recover the award amount from the registered owner of the offending vehicle.

12. The enhanced amount be deposited by respondent No.3 with the Registrar General of this Court within four weeks from today.

13. List for disbursement of the enhanced award amount on 26th April, 2019.

14. The appellants shall remain present in Court on the next date of hearing along with the passbooks of their savings bank accounts near the place of their residence as well as PAN card and Aadhaar card. The concerned bank of the appellants is directed not to issue any cheque book or debit card to the appellants and if the same have already been issued, the banks are directed to cancel the same and make an endorsement on their passbooks to this effect. The appellants shall produce the copy of this judgment to the concerned bank, whereupon the bank shall make an endorsement on the passbooks of the appellants that no cheque book and/or

debit card shall be issued to the appellants without the permission of this Court. However, the concerned bank shall permit the appellants to withdraw money from their savings bank account by means of a withdrawal form. The appellants shall produce the original passbooks of their individual savings bank accounts with the necessary endorsement on the next date of hearing.

15. Copy of this judgment be given *dasti* to counsel for the parties under the signature of the Court Master.

J.R. MIDHA, J.

MARCH 13, 2019
dk