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

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Date of Decision: 03.04.2019

% **MAC.APP. 920/2017 and CM APPL. 37864/2017**

UTTRAKHAND TRANSPORT CORPORATION Appellant

Through Mr. Shadab Khan, Advocate.

versus

JYOTI SARDANA & ORS

..... Respondents

Through Mr. Arvind Kumar, Advocate for R-1,
R-2, R-3 & R-5.

CORAM:

HON'BLE MR. JUSTICE A.K.CHAWLA

A.K.CHAWLA, J. (ORAL)

1. By the instant appeal, the appellant-the owner of bus bearing registration no.UK-07-PA-1358, in short, 'the offending vehicle', seeks to assail the judgment-Award dated 29.07.2017 passed by MACT (N/W), whereunder, the offending vehicle was held to be driven rashly and negligently resulting into the death of Mohan Kumar Sardana, in short 'the deceased'. The compensation came to be awarded to the respondent nos.1

to 5, who are his widow, children and the parents. The appellant assails the impugned judgment-Award, on two counts. Firstly, on the ground that the evidence and the other material on record before the Tribunal, was not sufficient to hold that the offending vehicle for the occurrence of the accident. The other ground of challenge is as regards the quantum of compensation.

2. As regards the plea that there was no sufficient material on record to attribute occurrence of the accident to the offending vehicle, Id. counsel for the appellant is at pains to point out the contradictions or inconsistencies in the deposition of PW-1, who has deposed for being an eyewitness and narrated the incident, as a consequence whereof, her husband sustained injuries and died. She has categorically deposed for being in the company of the deceased, when the accident occurred. When her such deposition has gone unshaken and unrebutted, the mere delay in lodging of the FIR, as is sought to be contended by the Id. counsel for the appellant, cannot be taken to be a circumstance, to cast a shadow of doubt on her deposition. More so, when the police on the investigations carried out on FIR, has also filed the charge-sheet, and, as per the investigations, found enough material to connect the offending vehicle and the driver thereof. For the foregoing reasons, no error can be found in the conclusions drawn by the Tribunal for the rash and negligent driving of the offending vehicle and the deceased having died on account of the injuries sustained, thereby. The contention raised to the contrary is therefore, rejected.

3. As regards the challenge to the quantum of compensation, the Tribunal has awarded the compensation under different heads, as follows:

1.	Compensation	Rs. 16,73,658/-
2.	Medical Bills	Rs. 1,63,376/-
3.	Funeral expenses	Rs. 25,000/-
4.	Loss of love and affection	Rs. 1,50,000/-
5.	Consortium	Rs. 1,50,000/-
6.	Loss of estate	Rs. 50,000/-
	<u>Total</u>	<u>Rs. 22,12,034/-</u>
	<u>Rounded off</u>	<u>Rs. 22,13,000/-</u>

From the impugned judgment, it can be deduced that the compensation under the first head is actually towards the loss of income/dependency. But, for the compensation awarded under the head of expenses towards medical bills, the appellant, assails the Award of compensation under all other heads. In the submissions of learned counsel for the appellant, as regards the compensation under the head of loss of income/dependency, as per the ratio of the judgment of Supreme Court in '*National Insurance Company Limited vs. Pranay Sethi and Ors*' 2017 SCC OnLine SC 1270, the future prospects of income could be taken only at 25% instead of 30%, which, the learned counsel for the claimants-

respondents does not dispute. In the given scenario, the compensation under the head of loss of income would come to Rs.16,09,335/- instead of Rs.16,73,658/-. Both the learned counsel for the parties agree to this figure of Rs.16,09,335/-. *Pranay Sethi's* case stipulates a sum of Rs.15,000/- towards the funeral expenses and the loss of estate, respectively. Applying so, the compensation awarded under such heads would come down to Rs.15,000/- each as against Rs.25,000/- and Rs.50,000/-, respectively. *Pranay Sethi's* case (supra) does not provide for compensation under the head of loss of love and affection is conceded to by the learned counsel for the claimants. The compensation awarded under such head is, therefore, deleted. In *Pranay Sethi's* case, the Supreme Court provided for compensation of Rs.40,000/- towards consortium. In ***Magma General Insurance Co. Ltd. vs. Nanu Ram***, 2018 SCC Online SC 1546, the Supreme Court taking note of *Pranay Sethi's* case has noted that consortium is a compendious term which encompasses spousal consortium, parental consortium and filial consortium. It is so observed, as under:

“.....
In legal parlance, “consortium” is a compendious term which encompasses ‘spousal consortium’, ‘parental consortium’, and ‘filial consortium’.

The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. With respect to a spouse, it would include sexual relations with the deceased spouse.

Spousal consortium is generally defined as rights pertaining to the relationship of a husband-wife which allows compensation to the surviving spouse for loss of “company, society, co-operation, affection, and aid of the other in every conjugal relation.”

Parental consortium is granted to the child upon the premature death of a parent, for loss of “parental aid, protection, affection, society, discipline, guidance and training.”

Filial consortium is the right of the parents to compensation in the case of an accidental death of a child. An accident leading to the death of a child causes great shock and agony to the parents and family of the deceased. The greatest agony for a parent is to lose their child during their lifetime. Children are valued for their love, affection, companionship and their role in the family unit.

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....."

In view of the foregoing ratio of the judgment in *Magma's* case (supra), the compensation under the head of consortium is therefore, required to be awarded to all the claimants-the respondent nos.1-5. Calculated thus, the compensation comes to Rs.2,00,000/- (Rs.40,000 x 5).

4. For the foregoing reasons, the impugned Award would stand modified, as follows:

Heads of compensation	As per the impugned Award	As per the modified Award
Compensation/Loss of Income/Dependency	Rs. 16,73,658/-	Rs. 16,09,335/-
Medical Bills	Rs. 1,63,376/-	Rs. 1,63,376/-
Funeral expenses	Rs. 25,000/-	Rs. 15,000/-

Loss of love and affection	Rs. 1,50,000/-	---
Consortium	Rs. 1,50,000/-	Rs. 2,00,000/-
Loss of estate	Rs. 50,000/-	Rs. 15,000/-
Total	Rs. 22,12,034/-	Rs. 20,02,711/-
Rounded off	Rs. 22,13,000/-	Rs. 20,03,000/-

The impugned Award stands modified accordingly. At this stage, it comes to be pointed out that the father of the deceased, who is the respondent no.4 in the appeal has since died and that his legal heirs are, none else, but, the respondent nos.1 to 3 and 5. The ld. counsel for the said surviving respondents states at the Bar that he has instructions to submit on their behalf that the Award amount of the deceased-respondent no.4 may exclusively be disbursed to his widow Mrs. Krishna Wati-the respondent no.5. In view of the statement so made at the Bar, it is directed that the Award amount to the account of the deceased Nand Lal-the respondent no.4, shall be disbursed to his widow Mrs. Krishna Wati-the respondent no.5, in consonance with the terms and conditions of the impugned Award. The excess amount, which may be lying deposited with the Tribunal, shall be released to the appellant along with the statutory deposit made with this Court, with interest, if any. The appeal and the pending application(s) stand disposed of, accordingly.

A.K. CHAWLA, J.

APRIL 03, 2019/nn