$~23&24

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

% *Decided on: 26.02.2020.*

\+ **<u>MAC.APP. 471/2017 & CM APPL. 19037/2017</u>**

SHRIRAM GENERAL INSURANCE CO. LTD ..... Appellant
Through: Mr. Mohd. Mobashshir, Adv.

versus

POONAM DEVI & ORS. ..... Respondents

Through: Mr. Manu Shahalia, Adv.

\+ **<u>MAC.APP. 747/2017</u>**

POONAM DEVI & ANR. ..... Appellants
Through: Mr. Manu Shahalia, Adv.

versus

SHRIRAM GENERAL INSURANCE CO. LTD & ORS.Respondents

Through: Mr. Mohd. Mobashshir, Adv.

**CORAM:**
**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**<u>NAJMI WAZIRI, J. (Oral)</u>**

1. This appeal impugns the award dated 28.03.2017, passed by the learned MACT in suit no. 3511/2016 on the ground that, albeit, it was noted that the deceased was under the influence of alcohol at the time of the motor accident but no contributory negligence was apportioned to him. The impugned order has dealt with the issue as under:-

*"21. Although, in the MLC Ex. PW1/5, alcohol is suspected in the breath of the deceased but that is not sufficient to return a finding of contributory negligence of the deceased. Moreover, it is not that the deceased was not using the Zebra Crossing. He was coming from service lane and was near Zebra Crossing when the accident took place. Therefore, the argument of the Insurance Company to impute 50% negligence for the accident on the part of the deceased is rejected."*

2. The Court is of the view that in order to establish contributory negligence on part of the deceased, on account of him being under influence of alcohol at the time of the motor accident, two elements have to be established (i) that the degree of alcohol in the blood of the person concerned ought to have been above the permissible limit and (ii) that the same should have contributed to the accident itself. Even in a case where a person is inebriated and/or where alcohol content is higher than the permissible limit i.e. 30 ml. of 100 ml., it would not necessarily lead to an inference that his condition had contributed to the occurrence of the accident, if the circumstances are as stark as him being run over by a clearly negligently driven offending vehicle. Suppose such a person was walking on the extreme left side of the road, which had no demarcated footpath, and a rampaging vehicle runs over him from behind, no contributory negligence can be apportioned to such a victim because his contribution to the accident would not be his inebriated condition. Instead the sole cause would be the rampaging nature of the offending vehicle. In the present case, the degree of inebriation or alcohol in the blood of the deceased was not ascertained, therefore, simply on the basis of smell of alcohol from the breath of the victim, it could not be concluded that he was under the influence of alcohol

to such an extent that he did not know the right from wrong at the zebra crossing. The fact that he was crossing the road at the zebra crossing itself goes on to show that he was conscious that it was an earmarked portion or a safe zone for crossing the road.

3. In view of the above there is no merit in the appeal. The same is dismissed.

4. Since the appeal has been dismissed, the statutory amount, along with interest accrued thereon, shall be deposited into the 'AASRA' Fund created by this Court for the amelioration or the conditioning and rehabilitation of burns victims.

**MAC. APPL. 747/2017**

5. In this cross appeal the claimant seeks enhancement of the award of compensation on the ground that compensation towards "loss of future prospects" has not been granted. The deceased was 27 years of age at the time of the motor accident. He was assumed to be self employed. Therefore in terms of dicta of Supreme Court in *National Insurance Co. Ltd. vs. Pranay Sethi & Ors.*, (2017) 16 SCC 680 "loss of future prospect" @ 40 % shall be payable to him. The same is granted to him. The amount payable under the head of "loss of dependency" shall be as under:-

Rs. 18,000/-(monthly income) x 12 (months) x 17 (multiplier) x 75/100 (1/4$^{th}$ deduction towards personal expenses) x 140/100 (40% towards loss of future prospects). = Rs. 38,55,600/-.

6. The aforesaid enhanced amount shall be paid to the claimants along with interest @ 9% per annum from the date of filing of the claim petition till its realization. The amounts shall be deposited before the Tribunal

within three weeks of receipt of the copy of this order and the same shall be disbursed to the claimants in terms of the scheme of disbursement provided therein. The amount already paid shall be set off.

7. The appeal is allowed and disposed off in the above terms.

**NAJMI WAZIRI, J**

**FEBRUARY 26, 2020**

kb