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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% ***Reserved on: 07.10.2022***
Pronounced on: 20.10.2022

\+ **MAC. APP. 716/2013**

SEEMA & ORS. ..Appellant
Through: Mr. Anshuman Bal, Advocate.

versus

NEW INDIA ASSURANCE & ORS ...Respondents

Through: Mr. Pankaj Seth, Advocate for Respondent no. 1.

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present appeal has been preferred by the Appellant under Section 173 of the Motor Vehicles Act, 1988 seeking enhancement of compensation awarded vide Award dated 02.05.2013 ("**impugned Award**") passed by the Court of learned Presiding Officer, Motor Accident Claims Tribunal (East), Karkardooma Courts, Delhi.

2. By way of the impugned Award dated 02.05.2013 the learned Tribunal Awarded a compensation of Rs. 5,56,360/- alongwith interest @ 7.5 % per annum from the date of filing of the claim petition till realization of the amount and directed the Insurance Company to deposit the entire awarded amount before the learned Claims Tribunal.

SUBMISSION ON BEHALF OF THE APPELLANTS/CLAIMANTS

3. Mr. Anshuman Bal, learned counsel appearing on behalf of the appellants seeking enhancement of the awarded compensation contended

that the learned Claims Tribunal erred in ignoring the testimony of PW-1, Smt. Seema which proved that the deceased was running a shop and was earning Rs. 6,000/- per month. He further contended that since the salary of the deceased was proved before the learned Claims Tribunal, the learned Claims Tribunal ought not to have calculated the compensation taking into account the minimum wages i.e. Rs. 3,690/- per month. Learned counsel while placing reliance on ***National Insurance Co. Ltd Vs Pranay Sethi & Ors*** reported as ***(2017) 16 SCC 680*** contended that compensation under the head '*Loss of Consortium*', '*Loss of Estate*' and '*Loss of Funeral Expenses*' needs to be modified/enhanced. Learned counsel further contended that in terms of dicta of ***Pranay Sethi (supra)*** since the deceased was of the age of 25 years at the time of the alleged incident, '*Future Prospects*' is to be paid by adding 40% of the assessed income of the deceased. Learned counsel while relying on the judgment of Hon'ble Supreme Court in the case of ***Erudhaya Priya vs State Express Transport Corporation Ltd*** reported as ***2020 SCC OnLine SC 601*** and ***Kirti & Anr. Etc. vs Oriental Insurance Co. Ltd. (Civil Appeal no. 19-20 of 2021) arising out of SLP (C) No. 18728-18729 of 2018*** decided on ***05.01.2021*** sought enhancement of rate of interest from 7.5% per annum to 9% per annum. Learned counsel fairly concedes that in terms of judgment of ***Pranay Sethi (Supra)***, compensation under the head '*Love and Affection.*' has to be deducted.

<u>SUBMISSION ON BEHALF OF THE RESPONDENT/INSURANCE COMPANY</u>

4. Mr. Pankaj Seth, learned counsel for the respondent/Insurance Company contended that the learned Claims Tribunal has rightly assessed the income of the deceased by taking into consideration the minimum

wages as the income of the deceased was not proved. He further contended that the learned Claims Tribunal has rightly granted the interest @ 7.5% per annum and as such no interference in this regard is called for by this Court.

COURT'S REASONING

5. The factum of the accident has not been challenged and it has been proved on record that the alleged incident occurred due to rash and negligent driving of the offending truck i.e UP 14J 9251.

6. From the perusal of the record, it transpires that PW-1/Ms. Seema wife of the deceased deposed before the learned Claims Tribunal that the deceased was earning Rs. 6,000/- per month, however, no persuasive evidence was led by PW-1 to prove on record that the deceased was running a shop. The learned Claims Tribunal while ascertaining the income of the deceased has rightly observed that '*the case of the petitioners is that the deceased Pradeep Kumar @ Leelu was running a shop and was earning Rs.6,000/- p.m. But the petitioners have not led any cogent evidence to prove that the deceased Pradeep Kumar @ Leelu was running a shop or that he was earning Rs.6,000/- p.m. Therefore, the income of the deceased Pradeep Kumar @ Leelu has been assessed on the basis of minimum wages which at the relevant time were Rs.3683/- per month say Rs.3690/- per month.*' Accordingly, this Court is of the view that the argument raised by the learned counsel for the Appellants with regard to calculation of compensation by taking into consideration the income of deceased as Rs. 6,000/- per month under the head '*Loss of Dependency*' holds no ground.

7. The other arguments raised by the learned counsel for the parties are purely legal and based on the law settled by the Hon'ble Apex Court in the case of ***Pranay Sethi (Supra)*** and in the case of ***Sarla Verma & Ors. Vs DTC & Anr.*** reported in ***(2009) 6 SCC 121.***

8. In terms of dicta laid down in the case of ***Pranay Sethi (Supra)***, the Hon'ble Supreme Court has held that for the conventional heads, namely, '*Loss of Estate*', *Loss of Consortium*' and '*Funeral Expenses*' amount of compensation is fixed at Rs. 15,000/-, Rs. 40,000/- and Rs.15,000/-, respectively with an increase of 10% after a period of 3 years.

9. As far as compensation under the head '*Future Prospects'* is concerned, admittedly the deceased was 25 years of age at the time of the alleged incident and accordingly in terms of ***Pranay Sethi (Supra)***, an addition of 40% of the established income of the deceased should be granted under the head '*Future Prospects'*. The Hon'ble Apex Court in the case of ***Pranay Sethi (Supra)*** with regard to grant of compensation under the head '*Future Prospects'* has held as under:-

> "*….The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in price index, the human attitude to follow a particular pattern of life, etc.,* ***<u>an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.</u>***
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> *58. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. Sarla Verma thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari. Judicial notice*

> *can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb Rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts.*"
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> (emphasis supplied)

10. In view of the above discussion, the impugned Award dated 02.05.2013 is modified to the following extent:

i. '*Loss of dependency*' is calculated as

1. Rs. 3,690/- + 40% (Rs. 1,476/-) = Rs. 5,166/-
2. Rs. 5,166/- less 1/3 deduction (Rs. 1,722/-) = Rs. 3,444/-
3. Rs. 3,444 X 12 X 18 = **Rs. 7,43,904/-**

ii. '*Loss of Consortium*' is computed as Rs. 44,000 X 3 = **Rs.1,32,000/-** to be paid to the appellants.

iii. '*Loss of Estate*' is quantified as **Rs. 16,500/-** to be paid to the appellants.

iv. '*Funeral Expenses* is quantified as **Rs. 16,500/-** to be paid to the appellants.

v. Compensation under the head '*Love and Affection*' is reduced to Nil.

vi. Total compensation to be paid to appellants is: **Rs.7,43,904/- + Rs.1,32,000/- + Rs. 16,500/- + Rs. 16,500/- = Rs.9,08,904/-.**

11. Accordingly, the compensation granted by the learned Claims Tribunal is enhanced from **Rs. 5,56,360/-** to **Rs. 9,08,904/-**.

12. The Respondent/Insurance Company is directed to deposit the entire awarded amount with the Registrar General of this Court within a period of 4 weeks. On deposit of the entire amount, the modified Award alongwith interest be released to the claimants within a period of two weeks in terms of the Award dated 02.05.2013.The statutory deposit shall also be released to the Appellant.

13. There would no change in the rate of interest awarded by the learned Tribunal.

14. Appeal is allowed. No order as to costs.

GAURANG KANTH, J.

OCTOBER 20, 2022