

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

Reserved on :02.09.2022

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Pronounced on :28.03.2023

+ **MAC.APP. 13/2021 AND CM APPL. 384/2021 & CM APPL. 386/2021**

ROYAL SUNDARAM GEN INS CO. LTD Appellant

Through: Mr. Pankaj Gupta, Advocate for Ms. Suman Bagga, Advocate.

versus

MANISHA & ORS. Respondents

Through: Mr. Ghanshyam Thakur, Advocate for R-1 to 5.

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

RAJNISH BHATNAGAR, J.

1. The present appeal has been filed under Section 173 of the Motor Vehicle Act, 1988 against the award dated 29.11.2019 passed by Presiding Officer, MACT, North West District, Rohini Courts, Delhi in MACT No. 50797/2016 with the following prayers:-

“a) It is therefore most respectfully prayed that the appeal of the Appellant may please be allowed / accepted and the Award dated 29.11.2019 passed by Sh. Amit Bansal, Judge MACT North West District, Rohini Courts, Delhi in MACT No. 50797/16 titled as "Manisha & Ors. Vs. Sukhbir & Ors." be suitably modified;

b) Any other or further order which this Hon'ble Court may deem fit and proper in the present facts and circumstance may also be passed in favour of the Appellant and against the Respondents."

2. In brief, the facts of the case are that Naresh died as a result of injuries suffered in a motor vehicular accident which occurred on 08.05.2014 at about 5:00 p.m., in front of NDPL office, inside of Shiv Vihar Road, Karala road, Delhi. The deceased was driving his engine fitted rickshaw thela when suddenly a Tata Tempo bearing registration no. HR-46D-0998 (offending vehicle), which was being driven by its driver in a rash and negligent manner came from behind and hit the rickshaw thela of deceased with great force. Due to the impact, deceased Naresh fell down and sustained grievous injuries which resulted in his death. Pursuant to this accident, an FIR No. 346/2014 U/s 279/304A IPC was registered at PS Kanjhawala.

3. I have heard the learned counsel for the appellant and perused the records of this case.

4. It is submitted by learned counsel for the appellant that learned Tribunal has wrongly awarded a sum of Rs. 2,00,000/- towards loss of consortium and Rs. 2,50,000/- towards loss of love and affection to the respondents and in accordance with the recent judgments and prevailing law, no amount should have been awarded towards loss of love and affection. He further submitted that as per ***National Insurance Co Ltd. vs. Pranay Sethi & Ors. (SLP(C) No. 25590/2014 decided on 31.10.2017)***, only the widow of the deceased is entitled to compensation under the head of loss of consortium and the compensation towards the non-pecuniary heads shall be

Rs. 70,000/- only in lump sum. He further submitted that the rate of interest @ 9% per annum awarded by the learned Tribunal is on the higher side as it is more than the prevailing rate of interest and the same may be reduced to 6% per annum.

Learned counsel for the appellant in support of his contentions has placed reliance on following judgments:-

- ***United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur & Ors., Civil Appeal No. 2705-2706 of 2020 (Arising out of SLP (Civil) No. 28548 of 2014 & 12520 of 2015).***
- ***The New India Assurance Company vs. Somwati, Civil Appeal No. 3093 of 2020 (Arising out of SLP (Civil) No. 23478 of 2019).***
- ***Dharampal & Ors. vs. U.P. State Road Transport, (SLP (C) No. 12917 of 2007).***

5. Having heard the counsel for the appellant and perusing the Award dated 29.11.2019, the relevant paras where the learned Tribunal has observed regarding the ***Loss of Consortium and Loss of Love and Affection*** reads as follows:-

“15. Filial Consortium/Consortium.

*The deceased was a married person and the petitioners/claimants are his wife and four children. The record would show that parents of deceased expired during the trial and they have been deleted from the array of parties. It is now a settled law in terms of Judgment of Hon'ble Supreme Court Of India, in case of ***Magma General Insurance Co. Ltd vs Nanu Ram and Ors, Civil Appeal No. 9581 of 2018, date of decision 18.09.2018: 2018(8) SCJ 338:2018 SCC Online SC 1546 and the judgment of Hon'ble Delhi High****

Court in case of Uttrakhand Transport Corporation Vs. Jyoti Sardana, MAC.APP.920/2017, date of decision 03.04.2019 that the compensation under the head of filial consortium is required to be awarded to all the claimants to the tune of Rs. 40,000/- each. In the present case there are 5 claimants who are wife and 4 Children of the deceased, hence, Rs. 2,00,000/- (Rs. 40,000/- x 5) is being granted under the said head.

16. LOSS OF LOVE & AFFECTION

*16.1 The Hon'ble Delhi High Court in the latest case of **The Oriental Insurance Co. Ltd vs Rinku Devi & Ors, MAC.APP. 815/2019, CM APPL.44502/2019 & CM APPL., 44503/2019** date of decision 09.10.2019 after referring to **Pranay Sethi (Supra)** and **Magma General Insurance Co. Ltd (Supra)** has given Rs. 50,000/- each to the claimants towards loss of love and affection. In view of above, 2,50,000/- (Rs. 50,000/- x5) is granted to claimants as there are 5 claimants."*

The main issues involved in this appeal for consideration before this court are the following:

- a) Whether the compensation awarded by the learned Tribunal towards "loss of consortium" is justified and proper?*
- b) Whether the compensation awarded towards "loss of love and affection" would be payable or not?*

6. In the instant case, there are five claimants as the deceased left behind his widow and four children as his dependents. On the basis of the judgments in **National Insurance Co. Ltd. vs. Pranay Sethi & Ors. [(2017) 16 SCC 680]**, **Magma General Insurance Co. Ltd. vs. Nanu Ram & Ors [(2018) 18 SCC 130]**, **United India Insurance Co. Ltd. vs. Satinder Kaur @**

Satwinder Kaur &Ors., Civil Appeal No. 2705-2706 of 2020 (Arising out of SLP (Civil) No. 28548 of 2014 & 12520 of 2015) and The New India Assurance Company vs. Somwati, Civil Appeal No. 3093 of 2020 (Arising out of SLP (Civil) No. 23478 of 2019), amount of compensation towards ‘Loss of Estate’, ‘Loss of Consortium’ and ‘Funeral Expenses’ is fixed at Rs 15,000/-, Rs 40,000/- and Rs 15,000/-, respectively with an increase of 10% after a period of three years.

In view of the above, the following amounts are awarded under the conventional heads:

- i) Loss of Estate: Rs. 16,500/-
- ii) Loss of Consortium: Rs. 44,000 x 5 (dependents) = Rs. 2,20,000/-
- iii) Funeral Expenses: 16,500/-

7. As far as the contention of the Ld. Counsel for the appellant that as per ***National Insurance Co Ltd. vs. Pranay Sethi &Ors. (SLP (C) No. 25590/2014 decided on 31.10.2017)***, the compensation towards the non-pecuniary heads shall be Rs. 70,000/- in lump sum only, now remains settled by the Hon’ble Supreme Court in ***United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur &Ors., Civil Appeal No. 2705-2706 of 2020 (Arising out of SLP (Civil) No. 28548 of 2014 & 12520 of 2015)***, wherein, compensation has been awarded towards loss of consortium to each family member and therefore, the impugned award does not call for any interference on this count.

8. In ***United India Insurance Co. Ltd. vs. Satinder Kaur @ Satwinder Kaur & Ors., Civil Appeal No. 2705-2706 of 2020 (Arising out of SLP (Civil) No. 28548 of 2014 & 12520 of 2015)*** decided by the Hon'ble Supreme Court, it is observed and held as under:

“The amount to be awarded for loss consortium will be as per the amount fixed in Pranay Sethi (supra). At this stage, we consider it necessary to provide uniformity with respect to the grant of consortium, and loss of love and affection. Several Tribunals and High Courts have been awarding compensation for both loss of consortium and loss of love and affection. The Constitution Bench in Pranay Sethi (supra), has recognized only three conventional heads under which compensation can be awarded viz. loss of estate, loss of consortium and funeral expenses.

In Magma General (supra), this Court gave a comprehensive interpretation to consortium to include spousal consortium, parental consortium, as well as filial consortium. Loss of love and affection is comprehended in loss of consortium.

*The Tribunals and High Courts are directed to award compensation for loss of consortium, which is a legitimate conventional head. There is **no justification to award compensation towards loss of love and affection as a separate head.**”*

In view of the above, the amount of Rs. 2,50,000/- awarded by the learned Tribunal towards “loss of love and affection” shall be deducted from the awarded amount.

9. Furthermore, keeping in view the settled legal principles laid down by the Hon'ble Supreme Court in ***S. Chandrasekharan & Ors. vs. M. Dinakar & Anr., Civil Appeal Nos. 4688-4689 Of 2022 (Arising out of SLP (C) Nos. 8119-8120 of 2019)*** and ***National Insurance Company Ltd.***

vs. Mannat Johal & Ors., Civil Appeal Nos.4079-4081 Of 2019(Arising out of SLP (C) Nos. 742-744 Of 2019), the rate of interest stands reduced from 9% per annum to 7.5% per annum from the date of filing of the claim petition till the date of realization.

10. Therefore, the appeal stands partly allowed to the extent of deduction towards “*loss of love and affection*” and reduction in the rate of interest only. However, it is pertinent to note that the amount awarded towards ‘*Loss of Estate*’, ‘*Loss of Consortium*’ and ‘*Funeral Expenses*’ stands modified to the extent of Rs. 16,500/-, Rs. 2,20,000/- and 16,500/-.

11. After deducting the aforesaid amount of Rs. 2,50,000/- awarded by the Tribunal towards “*loss of love and affection*”, the compensation amount shall be deposited by the appellant- Insurance Company, along with interest accrued thereon, before the learned Tribunal, within a period of four weeks of the computation by the Tribunal. The same be released to the beneficiaries of the award in terms of the scheme of disbursement which shall be specified therein.

12. Accordingly, the appeal along with pending applications, if any, stands disposed of subject to the above said modifications in the award.

13. The Tribunal shall re-compute the compensation amount in terms of the directions contained herein. Trial Court Record be sent back along with a copy of this Judgment for compliance.

14. The matter shall be listed before the concerned Tribunal on 12th April, 2023 for the purpose of re-computation of award amount and compliance of the directions issued herein.

RAJNISH BHATNAGAR, J

MARCH 28, 2023

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