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

% ***Reserved on: 24.11.2022***
Pronounced on: 28.03.2023

\+ **<u>MAC.APP. 962/2019</u>**

KATHIJA KHATOON & ORS .... Appellants

Through: Mr. Rajeev Sood, Advocate.
Mob. No. - 9811681788

versus

M/S UFC PROJECTS PVT LTD & ORS (M/S UNITED INDIA INSURANCE CO LTD) ..... Respondents

Through: Mr. Sankar N. Sinha, Advocate for R-3 (through VC)

CORAM:
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

<u>RAJNISH BHATNAGAR, J</u>

1. The present appeal has been filed under Section 173 of the Motor Vehicle Act, 1988 against the Award dated 04.09.2019 with the following prayers:-

> *"(a) To admit the appeal and summon the original records of Judgment/ Final Award dated 04.09.2019 passed by Ms. Himani Malhotra, Ld. PO MACT 02, West District, Tis Hazari courts, New Delhi in Petition No. 78028/2016 titled Khatija Khatoon & Ors Vs YFC Projects Pvt. Ltd. & Ors for enhancement of award.*
> *(b) To enhance the award amount.*
> *(c) To award costs of the appeal in favour of the Appellant*

> *and against the respondents; and*
> *Any other order[s]relief[s] which the Hon'ble court deems fit and proper, in the facts and circumstances of the case be also passed in favour of Appellant and against the respondent."*

2. It is submitted by learned counsel appearing for the appellants that learned Tribunal has granted compensation on the lower side under the head of Loss of Consortium. It is further submitted that learned Tribunal has only awarded ₹ 40,000/- in total to all the claimants instead it should have granted ₹ 40,000/- each to all the claimants under the said head. In support of his contentions, he has relied upon the judgement of the Hon'ble Supreme Court in ***Magma General Insurance Co. Ltd. Vs. Nanu Ram @ Chuhru Ram & Ors, 2018 SCC Online SC 1546.***

3. On the contrary, it is submitted by learned counsel for the respondent no. 3/Insurance Company that there is no error in the Award dated 04.09.2019 passed by learned Tribunal and the compensation granted under the said heads are just and proper.

4. In the instant case, a bare perusal of the impugned Award dated 04.09.2019 shows that the learned Tribunal has dealt with each and every issue in great detail. The Hon'ble Supreme Court in ***National Insurance Co. Ltd. vs. Pranay Sethi & ors.,*** **2017 (16) SCC 680** has observed as follows:

> *"52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh. It has granted ₹ 25,000/- towards funeral expenses, ₹ 1,00,000/- loss of consortium and ₹ 1,00,000/- towards*

loss of care and guidance for minor children. The head relating to loss of care and minor children does not exist. Though Rajesh refers to Santosh Devi, it does not seem to follow the same. The conventional and traditional heads, needless to say, cannot be determined on percentage basis because that would not be an acceptable criterion. Unlike determination of income, the said heads have to be quantified. Any quantification must have a reasonable foundation. There can be no dispute over the fact that price index, fall in bank interest, escalation of rates in many a field have to be noticed. The court cannot remain oblivious to the same. There has been a thumb Rule in this aspect. Otherwise, there will be extreme difficulty in determination of the same and unless the thumb Rule is applied, there will be immense variation lacking any kind of consistency as a consequence of which, the orders passed by the tribunals and courts are likely to be unguided. Therefore, we think it seemly to fix reasonable sums. ***It seems to us that reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be ₹ 15,000/-, ₹ 40,000/- and ₹ 15,000/- respectively.*** *The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantumcentric.* ***We think that it would be condign that the amount that we have quantified should be enhanced on percentage basis in every three years and the enhancement should be at the rate of 10% in a span of three years.*** *We are disposed to hold so because that will bring in consistency in respect of those heads."*

Further, the Hon'ble Supreme Court in ***United India Insurance Company Limited V Satinder Kaur Alias Satwinder Kaur and Ors.*** **{Civil appeal no.2705-2706 of 2020, arising out of SLP (Civil) No. 28548 of 2014 and SLP (Civil) No. 12520 of 2015}** ***and The New India Assurance Company vs Somwati*** **(Civil appeal no.3093 of**

2020), observed that amount under the head of loss of consortium shall be awarded to each of the claimants. Taking into account the observation of the Hon'ble Supreme Court, this Court deems it appropriate to award loss of consortium to the appellants/claimants @ ₹ 40,000/- each. Hence, in view of the above, the compensation Awarded under the head loss of consortium to the appellants/claimants is modified from ₹40,000/- in total to ₹44,000/- each.

5. Moreover, it has come to the notice of this Court that compensation under the Head of Loss of Estate and the Head of Funeral Expenses has not been granted in the Award dated 04.09.2019. In view of the judgment passed by the Hon'ble Supreme Court in '***National Insurance Co. Ltd. vs. Pranay Sethi & ors'*.,** where the Apex Court has observed that quantification of conventional and traditional heads must have a reasonable foundation, as the court cannot remain oblivious to the changes in prices and interest rates, granted the compensation under the heads of Loss of Estate and Funeral Expenses. Therefore, this Court finds that the appellants are entitled and granted compensation for a sum of ₹ 16,500/- each under both heads i.e., the Loss of Estate and the Funeral Expenses.

6. In view of the above discussion, the impugned Award dated 04.09.2019 is modified to the following extent:

- *Loss of Consortium* :- ₹ 44000/- x 7 (claimants) = ₹ 3,08,000/-.
- *Loss of Estate* :- ₹ 16,500/-.
- *Funeral Expenses* :- ₹ 16,500/-.

7. The Tribunal shall re-compute the compensation amount after considering the above said modifications, thereafter the same shall be disbursed to the claimants as per the scheme of disbursal mentioned therein. Trial Court Record be sent back along with a copy of this order for compliance.

8. Accordingly, the appeal stands disposed of accompanying pending applications (if any) with above said modification.

9. The matter shall be listed before the concerned Tribunal on 11th April, 2023 for the purpose of re-computation of award amount and compliance of the directions issued herein.

RAJNISH BHATNAGAR, J

MARCH 28, 2023/ib