2023:DHC:6719

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

Date of decision: 14.09.2023

\+ **MAC.APP. 30/2016**

LAXMI DEVI & ORS

..... Appellants

Through: Ms.Manisha Saroha, Adv.

versus

BIMLA GUPTA & ORS (ORIENTAL INSURANCE CO. LTD)

..... Respondents

Through: Mr.Virendra Singh, Adv. for R-1.

Mr.Pradeep Gaur & Ms.Sweta Sinha, Advs. for R-5.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed challenging the Award dated 08.05.2013 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, Rohini Courts, Delhi (hereinafter referred to as the 'Tribunal') in MACT No. 1016/2007, titled ***Smt. Laxmi Devi & Ors. v. Bimla Gupta & Ors.***.

2. The challenge of the appellants to the Impugned Award is on the following aspects:-

a) That the learned Tribunal has erred in granting future prospects on the income of the deceased only to the extent of 30%;

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b) That the learned Tribunal has erred in not granting compensation on account of loss of consortium;

c) That the learned Tribunal has erred in restricting the compensation on account of loss of estate and funeral expenses to Rs.10,000/- each.

3. I have considered the challenge laid by the counsel for the appellants.

FUTURE PROSPECTS

4. In ***National Insurance Company Limited v. Pranay Sethi and Ors.,*** (2017) 16 SCC 680, the Supreme Court has held as under:-

> *"59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.*
> *59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component."*

5. In the present case, it was the case of the claimants that the deceased was an owner of an electrical shop. He was aged

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around 30 years. Applying the ratio of ***Pranay Sethi and Others*** (Supra), the claimants were, therefore, entitled to future prospects at the rate of 40% of the income of the deceased. It is ordered accordingly.

LOSS OF CONSORTIUM

6. In terms of the judgment of the Supreme Court in ***Pranay Sethi and Others*** (Supra), as explained by the subsequent judgment in ***United India Insurance Company Limited v. Satinder Kaur alias Satwinder Kaur & Ors.***, (2021) 11 SCC 780, each of the legal representatives of the deceased are entitled to loss of consortium, be it '*parental*', '*spousal*', or '*filial*'.

7. In the present case, the deceased has left behind his widow, three children and the parents. Each of them would, therefore, be entitled to loss of consortium at the rate of Rs.40,000/-.

8. At the same time, the learned Tribunal has granted Rs.25,000/- to the claimants towards loss of love and affection. In view of the judgment of ***Pranay Sethi and Others*** (Supra), the same cannot be granted.

9. Accordingly, the Award shall stand modified to the extent that the claimants, that is, the appellants herein, shall be entitled to loss of consortium at Rs.1,60,000/-, however, at the same time, will not be entitled to compensation on account of loss of love and affection of Rs.25,000/-, as granted by the learned Tribunal.

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10. The parents of the deceased were added as proforma respondent nos.2 and 3 before the learned Tribunal. They are impleaded as proforma respondent nos.2 and 3 in the present appeal as well. They shall equally be entitled to compensation towards loss of consortium in spite of the respondent no.3 having made a statement before the learned Tribunal that she would like all the compensation amount to be paid only to the claimants/appellants. This is the mandate of first Proviso to Section 166 of the Motor Vehicles Act, 1988 as well.

11. Accordingly, the respondent nos.2 and 3 herein are awarded loss of consortium at the rate of Rs.40,000/- each, equalling to Rs.80,000/-. The Award shall stand modified to this extent.

LOSS OF ESTATE AND FUNERAL EXPENSES:

12. As far as compensation towards loss of estate and funeral expenses is concerned, the Supreme Court in ***Pranay Sethi and Others*** (Supra) has again held that the same should be granted at the rate of Rs.15,000/- each. The compensation amount shall stand enhanced accordingly.

RE-DETERMINATION OF THE COMPENSATION:

13. Accordingly, the compensation awarded in favour of the claimants and the respondent nos.2 and 3, shall be as under:-

S.No.	Compensation Heads	As Per Award	After Re-Calculation
1.	Loss of Dependency	@ 30% Future prospects Rs.3516 +1054/- = Rs 4,570/-	@ 40% future prospects Rs.3516 +1406/- = Rs 4,922/-

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		Less: 1/4th deduction =Rs1142 Rs. 3428 x 12 x 17=Rs. 6,99,312/-	Less: 1/4th deduction = Rs1231 Rs. 3691 x 12 x 17 = **Rs.7,52,964/-**
2.	Loss of Consortium to Appellants	Nil	Rs. 40,000 x 4 = **1,60,000/-**
3.	Loss of Love, Care and Affection	25,000	Nil
4.	Loss of Estate	10,000	**15,000**
5.	Funeral Expenses	10,000	**15,000**
	Total after deducting interim compensation	= Rs.7,44,312/- – Rs.50000/- = Rs.6,94,312/-	Rs.9,42,964/- – Rs.50000/- = Rs.8,92,964/-
6.	Loss of Consortium to Respondent no.2 & 3	Nil	Rs. 40,000 x 2 = Rs.80,000/-
	Total Enhanced Amount	(Rs.8,92,964/- + Rs.80,000) - Rs.6,49,312/- (Awarded as per the tribunal) = **Rs.3,23,652/-**	

DIRECTION:

14. The respondent no.5 shall deposit the enhanced compensation amount along with interest as awarded by the learned Tribunal, with the learned Tribunal within a period of six weeks from today. The same shall be released in favour of the appellants in accordance with the schedule of disbursement as stipulated in the Impugned Award.

15. The respondent nos.2 and 3 shall be entitled to seek release of the compensation amount awarded in their favour, from the learned Tribunal. The same shall be released as a lump-sum to them.

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16. The appeal is allowed in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J

SEPTEMBER 14, 2023/*rv/ss*

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