



2023:DHC:9083



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 15.12.2023*+ **MAC.APP. 526/2019 & CM APPL. 21208/2019****ORIENTAL INSURANCE COMPANY LTD.**

..... Appellant

Through: Mr.Anshul Kumar and
Mr.Abhishek Gola, Advs.
(through VC)

versus

SHAMSHAD BEGUM & ORS.

..... Respondents

Through: Mr.Shekhar Aggarwal, Adv. for
R-1 to R-8.

CORAM:**HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This appeal challenges the Award dated 06.02.2019 (hereinafter referred to as 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal-01 (Central-District), Tis Hazari Courts, Delhi (hereinafter referred to as 'Tribunal') in MACT No. 356621/2016, titled *Smt.Shamshad Begum & Ors. v. Sh.Shashinder Shokeen & Ors.*



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2. The limited challenge of the appellant to the Impugned Award is on the compensation awarded in favour of the claimants/respondent nos.1 to 8 herein by the learned Tribunal towards the non-pecuniary heads of 'loss of love and affection' of Rs.3,50,000/-; and 'loss of consortium' of Rs.2,80,000/-.

3. The learned counsel for the appellant submits that in terms of the judgement of the Supreme Court in *National Insurance Company Limited v. Pranay Sethi & Ors.*, (2017) 16 SCC 680, compensation towards non-pecuniary heads can only be granted on the head of 'Loss of Estate', 'Funeral Expenses' and 'Loss of Consortium'. He submits that, therefore, compensation awarded towards 'loss of love and affection' is liable to be set aside.

4. He further submits that compensation towards 'loss of consortium' is also to be confined only to a sum of Rs.40,000/- and is not payable to each of the Claimants, as has been done by the learned Tribunal.

5. On the other hand, the learned counsel for the respondent nos. 1 to 8 submits that there is indeed a loss of love and affection due to the death of the dear one and, therefore, learned Tribunal has rightly awarded compensation on the said head.

6. I have considered the submissions made by the learned counsels for the parties.

7. In *Pranay Sethi* (Supra), on the issue of grant of compensation on non-pecuniary heads, it has been *inter alia* held as under:-



“52. As far as the conventional heads are concerned, we find it difficult to agree with the view expressed in Rajesh [Rajesh v. Rajbir Singh, (2013) 9 SCC 54]. It has granted Rs 25,000 towards funeral expenses, Rs 1,00,000 towards loss of consortium and Rs 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 [Santosh Devi v. National Insurance Co. Ltd., (2012) 6 SCC 421], 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 seems 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 Rs 15,000, Rs 40,000 and Rs 15,000 respectively. The principle of revisiting the said heads is an acceptable principle. But the revisit should not be fact-centric or quantum-centric. 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



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so because that will bring in consistency in respect of those heads.”

(Emphasis supplied)

8. In view of the above, the award of compensation on the head of love and affection in favour of respondent nos.1 to 8 by the Impugned Award, cannot be sustained and is accordingly set aside.

9. In *United India Insurance Company Limited v. Satinder Kaur alias Satwinder Kaur & Ors.*, (2021) 11 SCC 780, the Supreme Court clarified that each of the legal representatives of the deceased are entitled to loss of consortium, be it ‘parental’, ‘filial’ or ‘spousal’.

10. In the present case, the Claimants were the wife, children, and the mother of the deceased who unfortunately died in the accident that had taken place on 11.01.2015. They all are, therefore, entitled to compensation towards loss of consortium in their own right.

11. The learned Tribunal has, in fact, made a mistake in excluding the respondent no.3 herein from receiving compensation towards loss of consortium, merely because of the fact that she was a married daughter of the deceased. A married daughter of the deceased does not lose her right to receive compensation towards loss of consortium merely on account of her marriage. She has equally lost her loved one as have the other legal representatives of the deceased. Accordingly, the compensation towards loss of consortium is



re-calculated as under:

S.No.	Particulars	Amount
1.	Rs.40,000 x 8	= Rs.3,20,000/-

12. In view of the above, the total compensation payable to the respondent no. 1 to 8 is re-determined as under:

<u>S.No.</u>	<u>Name of the Head</u>	<u>Amount</u>
1.	Loss of Income	Rs.11,08,404/-
2.	Loss of estate	Rs.15,000/-
3.	Funeral expenses	Rs.15,000/-
4.	Loss of consortium	Rs.3,20,000/-
	Total	Rs.14,58,404/-

13. The above amount shall carry interest at the rate of 9% per annum, as awarded by the learned Tribunal.

14. This Court, by its Order dated 06.05.2019, had directed that the total compensation awarded by the learned Tribunal, less Rs.2,40,000/- along with interest accrued thereon, be paid to the respondent nos.1 to 8 in accordance with the scheme of disbursal specified in the Impugned Award.

15. Now that the compensation amount has been reduced even further, the excess amount deposited by the appellant shall



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be released to the appellant along with proportionate interest. The remaining amount shall continue to be disbursed to the claimants/respondent nos.1 to 8 in accordance with the schedule of disbursement prescribed in the Impugned Award.

16. The statutory amount, along with interest accrued thereon, be released in favour of the appellant.

17. The appeal, along with the pending application, is disposed of in the above terms.

18. There shall be no orders as to costs.

NAVIN CHAWLA, J

DECEMBER 15, 2023/ns/SS

Click here to check corrigendum, if any