



2024:DHC:10185



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

% *Date of Decision: 12th December 2024*

+ **MAC.APP. 179/2021, CM APPL. 14292/2021 (stay)**

MAGMA HDI GENERAL INSURANCE CO. LTD.....Appellant

Through: Mr. Ved Vyas Tripathi, Mr. Vaibhav Verma and Mr. Pramod Kr. Sah, Advocates.

versus

1. Smt. SUDESH
W/o Sh. Hawa SinghRespondent No.1
2. SANDEEP RATHI
S/o Sh. Hawa SinghRespondent No. 2
3. MOHIT
S/o Sh. Hawa SinghRespondent No.3
4. Ms. RITU
D/o Sh. Hawa Singh (Deceased)Respondent No. 4
5. SANJAY @ SANJAY RATHEE (Driver cum owner)
S/o Ram Kumar ...Respondent No. 5
Through: Ms. Nikita Shrivastava, Advocate.

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+ **MAC.APP. 182/2021, CM APPL. 14395/2021 (stay)**

MAGMA HDI GENERAL INSURANCE CO. LTD.....Appellant

Through: Mr. Ved Vyas Tripathi, Mr. Vaibhav Verma and Mr. Pramod Kr. Sah, Advocates.



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versus

1. JOGENDER SINGH
S/o Suraj Bhan RatheeRespondent No.1
2. SANJAY @ SANJAY RATHEE (Driver cum owner)
S/o Ram KumarRespondent No.2
Through: Mr. Awadhesh Kumar, Advocate for
R1.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G E M E N T (Oral)

MAC.APP. 179/2021

1. The Appeal under Section 173 of the *Motor Vehicles Act, 1988* ('M.V. Act' *hereinafter*) has been filed by the Appellant/Insurance Company, against the Award dated 09.07.2020, *vide* which the compensation in the sum of Rs.10,63,500/- along with the interest @9% p.a. has been granted, on account of death of Mr. Hawa Singh, in the road accident on 23.07.2015.
2. The *sole grievance of the Insurance Company* is that the *Love and Affection* has been granted in the sum of Rs.2,00,000/- over and above Loss of Consortium in the sum of Rs.1,60,000/-. Love and Affection is covered under the Loss of Consortium and there is duplication of the compensation on this account, which may be revised.
3. *Learned counsel on behalf of the Respondents*, has appeared through video conferencing and submitted that the compensation has been granted, in accordance with law.
4. **Submissions heard and record perused.**



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5. ***Briefly stated***, on 23.07.2015 at about 11:30 pm, Sh. Hawa Singh (*hereinafter referred to as 'deceased'*) was travelling in Three-seater Auto Rickshaw ('TSR') bearing Registration No. HR-63B-2741, driven by Mr. Joginder Singh, towards Sampla Hospital from his residence for purchasing medicine. When TSR reached at Village Asanda near Shiv Mandir, on Sampla Road, Haryana, suddenly a Swift car bearing Registration No. DL-2CAS- 8887 ("offending vehicle" *hereinafter*) which was being driven by its Driver at a very high speed in a rash and negligent manner, came from opposite side and hit the TSR. Mr. Hawa Singh along with TSR driver sustained grievous injuries and were taken to Pt. B.D. Sharma, Post Graduate Institute of Medical Science, Rohtak, Haryana, where the concerned doctor declared Sh. Hawa Singh as "*brought dead*".
6. FIR No. 439/2015 was registered under Section 279/338/304A of the *Indian Penal Code, 1860* at PS Sadar, Bahadurgarh, Haryana.
7. The Petition under Section 166 and 140 of the M.V. Act, 1988, was filed by the Claimant for compensation in respect of the accidental death of Mr. Hawa Singh, on 23.07.2015.
8. The limited issue before this Court is whether the Loss of Love and Affection, is a separate Head from the Loss of Consortium.
9. The Constitution Bench in National Insurance Co. Ltd. v. Pranay Sethi, (2017) 16 SCC 680 has recognized only three conventional heads under which compensation can be awarded i.e. Loss of Estate, Loss of Consortium and Funeral Expenses.
10. In the case of United India Insurance Co. Ltd. vs Satinder Kaur @ Satwinder Kaur AIR 2020 SC 3076, while referring to Pranay Sethi (supra)



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the Apex Court has categorically observed that there is no justification to award compensation towards Loss of Love and Affection as a separate Head.

11. It is evident that the Loss of Love and Affection is covered under the Loss of Consortium. Consequently, there is duplication of the grant of compensation on account of Love and Affection, which is hereby held to be not payable. The compensation amount is accordingly revised as **Rs. 8,63,500/-** along with the interest as granted by the impugned Award.

12. The learned Counsel for the Insurance Company has further argued that penal interest @12% has been imposed if the compensation amount is not deposited within 30 days. However, the time to file Appeal is 90 days and consequently, this penal interest is not justified.

13. There is merit in the contention of the Ld. Counsel for the Insurance Company and the penal interest of 12% is revised; the interest rate is directed to be @ **9%p.a.**

Relief:

14. The compensation amount of **Rs.8,63,500/-** be released to the Claimants/Respondent No. 1 to 4, in terms of the Award dated 09.07.2020. The excess amount of compensation, if any, along with the corresponding interest and statutory amount deposited by the Insurance Company, be refunded to the Appellant/Insurance Company.

15. The Appeal is disposed of along with the pending Application.

MAC.APP. 182/2021

16. The Appeal under Section 173 of the *Motor Vehicle Act, 1988* ('M.V. Act' *hereinafter*), has been filed on behalf of the Insurance Company against



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the Award dated 10.07.2020 *vide* which the compensation in the sum of Rs.9,79,500/- along with the interest @9% p.a. has been granted, on account of injury suffered by Mr. Jogender Singh, aged about 41 years, in a road accident on 23.07.2015.

17. The *sole ground of challenge* in the Appeal, by the Insurance Company is that the Pain and Suffering has been awarded in the sum of Rs.1,00,000/-. However, the Loss of Amenities has also been granted in the sum of Rs.1,00,000/-, which needs to be modified.

18. Submissions heard.

19. The injured had suffered Permanent Disability of 85% of both lower limbs. The compensation for *Pain and Suffering* has been granted in the sum of Rs.1,00,000/-. However, the Loss of Amenities is on account of the difficulty that the person would face throughout his life on account of the disability of both lower limbs.

20. It is a separate Head and merely because the compensation under the Head of Loss of Pain and Suffering has been granted, does not imply that no compensation is required to be given for Loss of Amenities.

21. There is no merit in the present Appeal, which is hereby dismissed.

22. The Appeal is disposed of accordingly along with the pending Application.

**NEENA BANSAL KRISHNA
(JUDGE)**

DECEMBER 12, 2024/RS