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

% **Date of decision: 16th February, 2024**

\+ MAC.APP. 931/2017 & CM APPL. 38282/2017

HDFC ERGO GENERAL INSURACE CO LTD ..... Appellant
Through: Mr. A.K. Soni & Mr. Pavan Kumar Vashishth, Advs.

versus

PAPMA DAS & ORS ..... Respondents
Through: Mr. S.N. Parashar, Adv. for R1 to R4.

**CORAM:**
**HON'BLE MR. JUSTICE DHARMESH SHARMA**

**DHARMESH SHARMA, J. (ORAL)**

1. Having heard the learned counsels for the parties present and on perusal of the record, this Court proceeds to decide the present appeal.

2. The present appeal has been filed by the appellant/Insurance Company assailing the impugned judgment-cum-award dated 08.08.2017 passed by the learned PO-MACT-01, Dwarka Courts, New Delhi. The broad facts of the case are not in dispute**.** The motor accident, which took place on 23.12.2012, claimed the life of one Joydeb Das, who was 30 years of age and was survived by his wife, two minor children, and his father.

3. The claimants/respondent Nos. 1 to 4 have been awarded a total compensation of Rs.35,81,733/- by the learned Tribunal. Learned counsel for the appellant has urged that the learned Tribunal has

assessed the loss of future prospects @ 50%, which is excessive since the same should have been assessed @ 40% as per the decision in the case of **"National Insurance Company Limited vs. Pranay Sethi and Others 2017 16 SCC 680".** Further, it is pointed out that as regards the non-pecuniary losses, it has been wrongly assessed by the Tribunal towards 'loss of Love and Affection' to Rs.2,00,000/- besides the 'loss of the Estate', which has been assessed to Rs.1,00,000/-. Lastly, there is also a challenge to the rate of interest, which has been awarded @ 10% from the date of filing of the petition till the realisation.

4. *Ex facie*, the impugned judgment-cum-award requires modification as regards the compensation which has been awarded to the claimants/respondent Nos. 1 to 4. The loss of future prospects has to be reckoned @ 40% and each of the legal heirs is to be awarded a sum of Rs.30,000/- towards the loss of 'love and affection', besides Rs.15,000/- to each one towards the 'loss of a estate' and the amount towards the reimbursement should be reckoned at rate of Rs.15,000/-.

5. Accordingly, the break-up of the compensation is done as under:

| | | |
|---|---|---|
| a) | Annual Income of the deceased Joy Deb Das | Rs.1,62,444/- p.a. |
| b) | 40% addition towards Future Prospects as per Pranay Sethi Judgment | Rs.64,977/-<br>Rs.2,27,421/- |
| c) | 1/4$^{th}$ deduction on personal living expenses | Rs.56,855/-<br>Rs.1,70,566/- |

Total Loss of Dependency rounded to Rs.1,70,566 X 17 = Rs.28,99,622/- (Rupees Twenty Eight Lakhs Ninety Nine Thousand Six Hundred twenty Two Only). We further add compensation towards non pecuniary items viz., Rs1,20,000/- towards Loss of love and affection; Rs.1,00,000/- towards Loss of consortium; Rs.60,000/- towards loss of estate and Rs. 15, 000/- for funeral expenses. The total amount of compensation comes to Rs.31,94,622/-.

6. Insofar as the plea of the learned counsel for the appellant as to the exorbitant rate of interest is concerned, by no imagination it could be said to be onerous or exorbitant, or more than what the market conditions prevailed during the relevant time and the said plea is shot down.

7. Accordingly, a total sum of Rs. 31,94,622/- shall be payable to the respondent Nos. 1 to 4/claimants with interest @ 10% from the date of filing of the petition till the realisation.

8. Accordingly, the impugned judgment-cum-award dated 08.08.2017 is hereby modified and the amount of compensation for Rs.31,94,622/- with interest @10% from the date of filing of petition till realisation, is awarded to the claimants to be paid by the Insurance Company. It is a matter of record that 40% of the amount of compensation has already been released to the respondent Nos. 1 to 4/claimants in terms of the order dated 27.10.2017 of this Court. The remaining 60% balance amount of the compensation so worked out be released to them forthwith as per the directions of the learned Tribunal.

9. The statutory amount of Rs.25,000/-, which was deposited at

the time of filing of the appeal by the appellant/Insurance Company, be released to the Appellant/Insurance Company forthwith.

10. The appeal is disposed of accordingly. Interim orders stand vacated.

11. The pending application also stands disposed of.

**DHARMESH SHARMA, J.**

**FEBRUARY 16, 2024/sa**