(2018) 08 DEL CK 0158

In the Delhi High Court

Case No : MAC.APP. 738, 449 OF 2017 & Civil Miscellaneous No. 29703 OF 2017

Icici Lombard General Insurance Co Ltd & Ors — APPELLANT

Vs

Prabhabati Devi & Ors — RESPONDENT

Date of Decision : 10-08-2018

Acts Referred:

Citation : (2018) 08 DEL CK 0158

Hon'ble Judges : SUNIL GAUR, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

SUNIL GAUR, J

1. The above-captioned two cross appeals are directed against impugned Award of 19th April, 2017 vide which compensation of Rs. 31,03,624/- with

interest @ 9% per annum has been awarded to Claimants on account of death of a bank peon/attendant-Chander Kumar, aged 55 years. The above-

captioned first appeal is by the Insurer to seek exoneration from paying compensation granted, whereas in the above-captioned second appeal,

Claimants seek enhancement in the quantum of compensation granted by the Tribunal. Since these two appeals arise out of common Award,

therefore, both the appeals have been heard together and are being decided by this common judgment.

2. The factual background of this case, as noticed in the impugned Award, is as under:-

â??Brief facts of the case are that on 17.10.2015 at about 10.00 AM, deceased alongwith Damanpreet Singh, Anish Sharma, Rahul and Vaibhav

were going in car bearing registration No. DL-6CN-4727 which was driven by respondent No. 1 in a rash and negligent manner. When the car

reached on GT Road Jalwehra Village, National Highway, it hit against a truck from behind due to high speed. After the accident, occupants of car

were taken to hospital. Deceased Chander Kumar @ Chander Kumar Upadhyay was taken to PGI, Chandigarh where he died on the date of

accident itself.â??

3. The Motor Accident Claims Tribunal (hereinafter referred to as â??the Tribunalâ?) has calculated the loss of dependency while taking income of

deceased at Rs. 28,973.40/- (rounded off to Rs. 28,975/-). No addition towards â??future prospectsâ? has been made and one-fourth has been

deducted towards the â??personal expensesâ? of deceased and by applying the multiplier of 11, the â??loss of dependencyâ? has been assessed at

Rs. 28,68,624/-. Compensation of Rs. 1,00,000/- has been awarded under the head of â??Love and Affectionâ? and â??Funeral Expensesâ? of Rs.

25,000/- have been granted by the Tribunal. Under the head â??Loss of Estateâ? compensation of Rs. 10,000/- has been granted. The break-up of

compensation awarded by the Tribunal is as under:- Â

Â Loss of dependency : â??28,68,624 /-

Â Loss of love and affection : Rs. 1,00,000/-

Â Funeral expenses : Rs. 25,000/-

Â Loss of Estate : Rs. 10,000/-

Â Loss of Consortium : Rs. 1,00,000/-

Total : Rs. 31,03,624/-

4. The challenge to impugned Award by learned counsel for Insurer is on the ground that negligence of driver of the insured vehicle does not stand

proved. So, it is submitted that the claim petition of Claimants ought to be dismissed.

5. On the contrary, learned counsel for Claimants supports the impugned Award and submits that the compensation granted by the Tribunal is

inadequate and it needs to be suitably enhanced in view of Salary Slip (Ex. PW2/1). It is further submitted that addition towards â??future

prospectsâ? has to be 15% in view of Supreme Courtâ??s Constitution Bench decision in National Insurance Company Ltd. Vs. Pranay Sethi &

Ors. 2017 SCC OnLine SC 1270. So, it is submitted that the compensation granted by the Tribunal ought to be reasonably enhanced.

6. Upon hearing and on perusal of impugned Award and the evidence on record and the decision cited, I find that this fatal accident was witnessed by

Raju (PW-3), who in his evidence has not exactly stated as to how the accident took place. There is one line cross-examination of this witness (PW-

3) regarding his not knowing anything about the accident. During the course of hearing, Insurerâ??s counsel has sought to place reliance upon the

copy of the FIR to point out that the offending vehicle i.e. truck had hit the insured car from the side, which resulted in happening of this accident.

7. On the negligence aspect, I find that FIR of this case was registered on the basis of the statement of the deceased and its perusal clearly reveals

that the negligence was of the truck driver and not the driver of insured vehicle in question. There is nothing on record to controvert the contents of

the FIR, whose authenticated copy is on record and so, there is no basis to absolve the Insurer from the liability to pay the awarded compensation.

However, I find that the â??non pecuniary damagesâ? awarded to the legal heirs of the deceased has to be in consonance with Supreme Courtâ??s

Constitution Bench decision in Pranay Sethi (Supra). In the considered opinion of this Court, the Tribunal has erroneously computed the income of

deceased on the basis of Basic Pay, HRA and DA. However, deduction of one-fourth towards personal expenses is rightly made by the Tribunal.

Since the deceased was aged about 55 years, therefore, addition towards â??future prospectsâ? has to be 15%. In view of Supreme Courtâ??s

Constitution Bench decision in Pranay Sethi (Supra), the Tribunal has erred in not granting it. The deceased was a regular employee of Syndicate

Bank and as per Salary Slip (Ex. PW2/1), his gross salary wasR s. 36,689.20/- (rounded of to Rs. 36,690/-). In view of Supreme Courtâ??s

Constitution Bench decision in Pranay Sethi (Supra), the actual salary should be read as actual salary less tax. As per relevant ITR (Ex. PW1/1

colly.), no tax was payable on the income of deceased. Accordingly, the â??loss of dependencyâ?? is reassessed as under:

Rs. 36,690/- X 12 X 3/4 X 11 X 115/100 = Rs. 41,77,156/-

8. As regards compensation granted under the â??non pecuniary headsâ?, it needs to be brought in tune with Supreme Courtâ??s Constitution

Bench decision in Pranay Sethi (Supra). Accordingly, compensation granted by the Tribunal under the head of â??loss of love and affectionâ? is

disallowed. â??Funeral expensesâ? are reduced from Rs. 25,000/- to Rs. 15,000/-. However, compensation granted under the head â??loss of

estateâ? is increased from Rs. 10,000/- to Rs. 15,000/- whereas compensation granted under the head â??loss of consortiumâ? is reduced form Rs.

1,00,000/- to Rs. 40,000/-. In view thereof, compensation payable to legal heirs of deceased-Chander Kumar is reassessed as under: -

Loss of dependency : Rs. 41,77,156/-

Funeral expenses : Rs. 15,000/-

Loss of Estate : Rs. 15,000/-

Loss of Consortium : Rs. 40,000/-

Total : Rs. 42,47,156/-

9. In light of the aforesaid, compensation of Rs. 31,03,624/- granted by the Tribunal, is enhanced to Rs. 42,47,156/-, which shall carry interest @ 9%

per annum. Registry is directed to refund the statutory deposit, if any, subject to Insurer depositing enhanced compensation with the Registrar General

of this Court within six weeks and thereafter, the modified compensation be released to the Claimants in terms of the judgment, but in the same ratio

and manner as indicated by the Tribunal in the impugned Award.

10. With aforesaid directions, both the appeals and the pending application are accordingly disposed of.