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

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Reserved on : 26.08.2022
Pronounced on: 23 .09.2022

+ MAC.APP. 361/2013

KANTI DEVI & ORS Appellants

Through: Mr. S.N. Parashar, Advocate
versus

NEW INDIA ASSURANCE COMPANY LTD.

& ORS Respondents

Through: Mr. J.P.N. Shahi, Advocate

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present appeal has been preferred by the Appellant under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 30.03.2012 passed by the Court of learned Presiding Officer, Motor Accident Claims Tribunal, Karkardooma Courts, Delhi.
2. By way of impugned Award dated 30.03.2012 the learned Claims Tribunal Awarded a compensation of Rs. 9,83,660/- with interest @ 7.5 % per annum from the date of filing of the claim petition till realization of the amount and directed the Insurance Company to deposit the entire awarded amount before the Tribunal within a period of one month.

SUBMISSION OF THE APPELLANTS

3. Mr. S. N. Parashar learned counsel for the Appellant restricted his arguments on quantum of compensation awarded by the learned Claims Tribunal and contended that in terms of dicta of *Hon'ble Supreme Court in National Insurance Co. Ltd Vs Pranay Sethi & Ors* reported as *2017 AIR (SC) 5157*, compensation is to be paid under the head 'Future Prospects' by adding 25% of the assessed income of the deceased. Learned counsel, while placing reliance on *Pranay Sethi (supra)* case, further contended that compensation under the 'Loss of Consortium' 'Loss of Estate' and 'Loss of Funeral Expenses' also needs to be modified/enhanced. Learned counsel fairly concedes that in terms of judgment of *Pranay Sethi (Supra)*, compensation under the head 'Love and Affection.' has to be deducted.

SUBMISSION OF THE RESPONDENTS

4. Mr. J.P.N. Shahi, Advocate learned counsel appearing on behalf of respondent No. 1 contended that the impugned Award passed by the learned Claims Tribunal is based on cogent, consistent and reliable evidences and no interference in the impugned Award is called for by this Court.

COURT'S REASONING

5. The arguments raised by the learned counsel for the parties are purely legal and based on the law settled by the Hon'ble Apex Court in the case of *Pranay Sethi (Supra)*.

6. From the perusal of the judgment of *Pranay Sethi (Supra)*, it is emphatically clear that for the conventional heads, namely, 'Loss of Estate', 'Loss of Consortium' and 'Funeral Expenses' the amount of compensation is fixed as Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/-, respectively with an increase of 10% after a period of 3 years. Further, since the deceased was aged 44 years at the time of alleged incident an addition of 25% of the established income should be granted under the head 'Future Prospects'. With regard to deduction to be made towards 'Personal and Living Expenses', the Hon'ble Supreme Court in *Pranay Sethi (Supra)* upholds the deduction ascertained in the case of *Sarla Verma & Ors. Vs DTC & Anr.* reported as (2009) 6 SCC 121.
7. It is borne out from the records that deceased was survived of seven legal representatives. However, the learned Claims Tribunal, considered only 4 of them are dependent (excluding the 2 married daughters and major son) of the deceased. Accordingly, in terms of the aforesaid judgments deduction towards personal and living expenses of the deceased should be one-fourth (1/4th).
8. Regarding the consortium to be granted in the present case, this Court notes that the learned Claims Tribunal has treated only 4 of the legal representatives as dependent of the deceased. According to the learned Claims Tribunal, there is no evidence to the fact that the 2 married daughters and major son are dependent on the deceased.

9. The Hon'ble Supreme Court in the case of *Magma General Insurance Company Vs Nanu Ram alias Chuhru Ram* reported as (2018) 18 SCC 130, while explaining the principle of consortium, held that in legal parlance, 'consortium' a compendious term which encompasses 'spousal consortium', 'parental consortium', and 'filial consortium'. The right to consortium would include the company, care, help, comfort, guidance, solace and affection of the deceased, which is a loss to his family. Parental consortium is granted to the child upon the premature death of a parent for loss of parental aid, protection, affection, society, discipline, guidance and training. This Court is of the considered opinion that parental consortium is available to all the children irrespective of the fact that whether they were dependent on the deceased or not. Hence in the present case, all the children of the deceased are entitled for the consortium under the head Parental Consortium. The widow is entitled for the spousal consortium and mother is entitled for the filial consortium.
10. In view of the above discussion the impugned Award dated 30.03.2012 is modified to the following extent:
- (a) 'Loss of dependency' is calculated as
1. Rs. 7,410/- + 25% (Rs. 1,853/-) = Rs. 9,263/-
 2. Rs. 9,263/- less 1/4 deduction (Rs 2,316/-) = Rs.6,947/-
 3. Rs. 6,947X 12 X 14 = **Rs. 11,67,096/-**

- (b) '*Loss of Consortium*' is computed as Rs. 44,000 X 7 = **Rs. 3,08,000/-** to be paid to the appellants/claimants.
- (c) '*Loss of Estate*' is quantified as **Rs. 16,500/-** to be paid to the appellants/claimants.
- (d) '*Funeral Expenses* is quantified as **Rs. 16,500/-** to be paid to the appellants/claimants.
- (e) Compensation under the head '*Love and Affection.*' = Nil.
- (f) Total compensation to be paid to appellants/claimants is; **Rs. 11,67,096/- + Rs. 3,08,000/- + Rs. 16,500/- + Rs.16,500/- = Rs. 15,08,096/-**
11. Accordingly, the computation of compensation by the learned Tribunal is enhanced from **Rs. 9,83,660/-** to **Rs. 15,08,096/-**.
12. The Respondent is directed to deposit the entire differential amount with the learned Claims Tribunal within a period of 4 weeks. On deposit of the entire amount, the modified Award alongwith interest is directed to be released to the appellants/claimants in terms of the Award dated 30.03.2012. Statutory amount, if deposited, be released to the appellant.
13. There would no change in the rate of interest awarded by the learned Tribunal.
14. Appeal stands disposed of. No order as to costs.

**GAURANG KANTH
(JUDGE)**

SEPTEMBER 23, 2022