

\$~8

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

%

Decided on: 31.10.2019

+ **MAC.APP. 581/2013**

THE NEW INDIA ASSURANCE CO LTD Appellant

Through: Mr. Pankaj Seth, Advocate.

versus

SMT VEENA SONI AND ORS Respondents

Through: Mr. L.P. Solanki and Mr. K.P.
Advocates for R-1, R-2 & R-5.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This appeal impugns the award of compensation dated 25.03.2013 passed by the learned MACT in MACT No. 28/09/03 on two grounds:

- (i) That the identity of the offending insured vehicle was never established.
- (ii) That the quantum of compensation itself is on the higher side.

2. The first contention is untenable because the FIR was registered under the directions of the learned Judicial Magistrate on an application being moved by the claimants under section 156(3) of the CrPC.

3. The learned Tribunal was of the view that the learned Magistrate had obviously applied his mind while passing the order for registration of the case on the DD entry no. 8 which was exhibited as PW 1/1. Neither the insurance company nor any party concerned had challenged the registration

of the FIR. Therefore, obviously the *prima-facie* identification of the vehicle had been completed. Furthermore, the police officer: PW 4 SI Vijay Bahadur Singh was examined and he stated that Exhibit PW 1/B 'panchayatnama' had been recorded apropos the enclosed report relating to the aforesaid FIR.

4. During the course of investigation the offending vehicle and its driver were traced out on 14.10.2011. The learned Tribunal had noted that the insurance company had not produced an *iota* of evidence to support its defence, therefore, insofar as the police investigation had identified the vehicle and its driver and the cause of the accident had been attributed to them. The insurer had failed to prove its contention that the accident did not occur due to negligent driving of the offending vehicle, its contention about non-involvement of the said vehicle and consequent loss caused due to the accident was found untenable.

5. The learned Tribunal noted that the testimony of PW 3 Surender Kumar, the injured helper in the victim's vehicle, remained unshaken during cross-examination. It is in these circumstances that the offending vehicle was identified and liability to pay compensation was fixed upon the insurer. The said conclusion calls for no interference.

6. The appellant's next contention is that the deceased being 40 years and 11 months of age at the time of his unfortunate demise due to the motor accident, he would be considered as a person falling in the age bracket of 40 to 50 years, resultantly, the claimants would be entitled to addition of 25% towards 'loss of future prospects' in terms of the dicta of the Supreme Court in *National Insurance Co. Ltd. vs. Pranay Sethi & Ors.*, (2017) 16 SCC

680, para 59(iv). The aforesaid contention is correct, therefore, the 'loss of future prospects' is reduced from 30% to 25%.

7. The Court would note that the learned Tribunal has awarded only Rs. 25,000/- and Rs. 10,000/- as compensation towards 'loss of love and affection' and 'loss of consortium' respectively. There are five claimants, therefore, each of them would be entitled to compensation towards 'loss of love and affection' and 'loss of consortium' @ Rs. 50,000/- and Rs. 40,000/- respectively in terms of the dicta of the Supreme Court *in Magma General Insurance Co. Ltd. vs. Nanu Ram @ Chuhru Ram & Ors.*, 2018 SCC OnLine SC 1546. Furthermore, compensation towards 'Funeral Expenses' and 'Loss of Estate' would be enhanced from Rs. 10,000/- each to Rs. 15,000/- under each head in terms of *Pranay Sethi (Supra)*.

8. The amount shall be payable as under:

Sl. No.	Heads	Enhanced Amount awarded by this Court
1.	Loss of dependency [(Rs. 2,772/-(minimum wage)x12(months)x14(multiplier)x125/100(loss of future prospects)x75/100(1/4 th deduction towards personal expenses)]	Rs. 4,36,590/-
2.	Loss of Love and Affection [(Rs. 50,000/-x5 (claimants)]	Rs. 2,50,000/-
3.	Loss of Consortium [(Rs. 40,000/-x5 claimants)]	Rs. 2,00,000/-
4.	Loss of Estate	Rs. 15,000/-
5.	Funeral Expenses	Rs. 15,000/-
Total		Rs. 9,16,590/-

9. The enhanced amount of Rs. 4,07,536/- shall be payable, alongwith interest @ 9% from the date of filing of the appeal till its realization.

10. Since the accident happened in the year 2001 and almost two decades have gone by, therefore, let the entire amount be released to the beneficiary(ies) of the Award directly into their respective bank accounts as furnished by their counsel, within three weeks from the date of receipt of copy of this order in terms of the scheme of disbursement specified in the award. The bank accounts are as under:

Name of Beneficiary(ies)	Bank Name	Bank Account No.	IFSC Code
Ms. Veena, R-1	Punjab National Bank, Rohtak	1519000100425141	PUNB0083800
Ms. Vaishali, R-2	ICICI Bank, Rohtak	016801524331	ICIC0000168
Ms. Deepali, R-3	Canara Bank, Rohtak	1171108405644	CNRB0001171
Mr. Sahil, R-4	Punjab National Bank, Rohtak	0406011500002869	PUNB0484800
Ms. Maya Wanti, R-5	Indian Bank, Rohtak	6113908716	IDIB000R019

10. Since the appellant has partially succeeded in the appeal, let the statutory amount, alongwith interest accrued thereon, be returned to the appellant.

11. A copy of this order be given *dasti* to the learned counsel for the parties under the signature of the Court Master.

NAJMI WAZIRI, J

OCTOBER 31, 2019

AB