

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

% ***Date of Decision: February 21, 2017***

(i) + **MAC.APP. 259/2008**

NATIONAL INSURANCE CO. LTD. Appellant

Through: Mr. Amit Gaur and Mr. Pradeep Gaur,
Advocates

Versus

PARMILA TEOTIA & ORS Respondents

Through: Mr. Sanjay Bansal, Advocate for
respondents-Claimants

(ii) + **MAC.APP. 108/2017**

PARMILA TEOTIA & ORS Appellants

Through: Mr. Sanjay Bansal, Advocate

Versus

NATIONAL INSURANCE CO LTD. Respondent

Through: Mr. Amit Gaur and Mr. Pradeep Gaur,
Advocates for respondent-insurer

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above-captioned two appeals arise out of common impugned Award of 2nd January, 2008 which grants compensation of ₹16,87,400/-

with interest @ 7% *per annum* to Claimants on account of death of one *Krishan Pal Singh* in a road accident on 21st February, 2004. In the above-captioned first appeal, reduction of compensation is sought whereas in the above-captioned second appeal, enhancement of compensation is sought.

2. The facts are already noted in detail in impugned Award and so, need no reproduction. Suffice to note that apart from the evidence of Claimants, there is evidence of *Sameet Gambhir* (PW-4), a friend of deceased, who has deposed on the income aspect of deceased. The breakup of compensation as awarded by Motor Accident Claims Tribunal (*hereinafter referred to as the 'Tribunal'*) is as under: -

1.	Compensation of loss of dependency	₹16,70,400/-
2.	Love & Affection & Loss of Estate	₹10,000/-
3.	Loss of Consortium	₹5,000/-
4.	Funeral Expenses	₹2,000/-
Total		₹16,87,400 /-

3. With the consent of learned counsel for the parties, the above-captioned two appeals have been heard together and by this common judgment, they are being decided.

4. Learned counsel for Insurer submits that 50% addition towards '*future prospects*' has been erroneously made by learned Tribunal while assessing the '*loss of dependency*' and that multiplier of 15 ought to have been applied as the deceased was aged 37 years on the day of the

accident. So, it is submitted that impugned Award needs to be suitably modified to reduce the quantum of compensation granted.

5. On the other hand, learned counsel for Claimants submits that compensation granted by learned Tribunal is inadequate and it needs to be suitably enhanced. It is pointed out by learned counsel for Claimants that the compensation granted under the non-pecuniary heads is inadequate and that the income of deceased ought to have been taken on the basis of bank statements of deceased. It is submitted that the multiplier applied is correct. Enhancement of compensation is sought by learned counsel for Claimants while pointing out that deceased was a Company Secretary by profession and was into private practice and was earning well and this aspect has not been considered by learned Tribunal. It is also pointed out by learned counsel for Claimants that since there are four dependents, therefore, deduction of 1/4th ought to have been made towards '*personal expenses*' of deceased and not 1/3rd, as has been done by learned Tribunal. Lastly, it is submitted by learned counsel for Claimants that the rate of interest granted by learned Tribunal is on lower side and it needs to be suitably enhanced. In support of these submissions, reliance is placed upon Supreme Court's decisions in *Rajesh and Others v. Rajbir Singh and Others*, (2013) 9 SCC 54 and *Kalpanaraj and Others v. Tamil Nadu State Transport Corporation*, (2015) 2 SCC 764 and decision of this Court in MAC. APP. 324/2016 titled *Kiran v. National Insurance Co. Ltd. & Ors.*, rendered on 9th December, 2016.

6. Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that since deceased was aged 37

years on the day of accident, therefore, multiplier of 15 ought to have been applied. Learned Tribunal has erred in applying the multiplier of 16. However, the Tribunal has rightly not placed reliance upon the bank statements of deceased to assess the '*loss of dependency*' because it does not co-relate with deceased's Income Tax Returns of last two years. Learned Tribunal has rightly relied upon the Income Tax Returns to assess the income of deceased. This Court is fortified by a recent decision of Supreme Court in *Kalpanaraj (supra)* to rely upon the Income Tax Returns to assess the income of deceased. So, no case for enhancement of compensation under the head of '*loss of dependency*' is made out. Rather, the quantum of compensation determined under this head needs to be suitably reduced on account of application of appropriate multiplier in terms of Supreme Court decision in *Sarla Verma (Smt.) and Others v. Delhi Transport Corporation and Another*, (2009) 6 SCC 121.

7. As already noted above, multiplier of 15 ought to have been applied. Further, since there are four dependents left behind by deceased, therefore, deduction of 1/4th ought to have been made towards '*personal expenses*' of deceased. Learned Tribunal has erred in deducting 1/3rd towards '*personal expenses*' of deceased.

8. No doubt, this Court in MAC. APP. 324/2016 titled *Kiran v. National Insurance Co. Ltd. & Ors.*, rendered on 9th December, 2016, has relied upon Supreme Court's decision in *Rajesh (supra)* to maintain the addition of 50% towards '*future income*' but in view of Supreme Court's dictum in *S.K. Kapoor* (2011) 4 SCC 589, the earlier decision of the same strength shall prevail. So, on this aspect, no reliance can be placed upon

a later Three Judge Bench decision of Supreme Court in *Rajesh (supra)*. While relying upon Supreme Court's earlier Three Judge Bench decision in *Reshma Kumari & Ors. v. Madan Mohan & Anr.* (2013) 9 SCC 65, the addition of 50% towards '*future prospects*' is disallowed, as deceased was self employed. Thus, the loss of dependency is reassessed at ₹1,04,414/- X 15 X 3/4 = ₹11,74,657.50/- (rounded off to ₹11,74,658/-).

9. Under the non-pecuniary heads, the compensation assessed by learned Tribunal is certainly on lower side. In the light of Supreme Court's decision in *Rajesh (supra)* and the facts and circumstances of this case, the compensation under the head of '*loss of love and affection*' is enhanced from ₹10,000/- to ₹1 lac and compensation under the head of '*loss of consortium*' is enhanced from ₹5,000/- to ₹1 lac. Likewise, the compensation under the head of '*loss of estate*' is enhanced from ₹5,000/- to ₹50,000/- and '*funeral expenses*' are enhanced from ₹2,000/- to ₹25,000/-. Thus, the total compensation payable to Claimants is reassessed as ₹14,49,658/-, which is rounded off to ₹14,50,000/-.

10. Supreme Court in *Kalpanaraj (supra)* has granted interest @ 9% p.a. where the accident took place in 1994. In the instant case, the accident is of the year 2004. Therefore, in the facts of this case, it is deemed appropriate to enhance the rate of interest from 7% *per annum* to 9% *per annum*. During the pendency of Insurer's appeal, vide order of 25th April, 2008, 50% of the awarded amount was directed to be released to Claimants. The excess amount deposited by Insurer with interest be refunded and the compensation payable to Claimants as per this judgment be released to them. Impugned Award is modified in terms of this

judgment.

11. Statutory deposit, if any made by Insurer, be refunded as per Rules.

12. The above-captioned two appeals are partly allowed to the extent indicated above and are disposed of as such.

(SUNIL GAUR)
JUDGE

FEBRUARY 21, 2017

s/r

