

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

Date of Decision: December 05, 2017

+ MAC.APP. 285/2014

NATIONAL INSURANCE CO LTD. Appellant

Through: Mr. Harsh Lata, Advocate for
Ms. Shanta Devi Raman, Advocate

Versus

SUDHA KUMARI & ORS. Respondents

Through: Mr. C.S.S. Tomar, Advocate for
respondents No.1 to 4

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

ORAL

1. Impugned Award of 30th January, 2014 grants compensation of ₹14,31,050/- with interest @9% p.a. to respondents-claimants, who are widow, two sons and one daughter of deceased. As per the impugned Award, respondent-widow gets the compensation of ₹10,01,735/- and other legal heirs of deceased get compensation of ₹1,43,105/-each with interest.

2. Learned Motor Accident Claims Tribunal (*henceforth referred to as 'the Tribunal'*), in the impugned award, has calculated the “*loss of dependency*” while taking income of the deceased and after deduction of tax, net income of the deceased has been assessed at ₹2,69,223 p.a., while

noting that both the sons and daughter of deceased, were not dependent upon him. Learned Tribunal has deducted 1/3rd of income towards “*personal expenses*” of the deceased and multiplier of five has been adopted to work out the compensation in the impugned Award. Under the head of “*non pecuniary expenses*”, compensation of ₹1,00,000/- towards “*love and affection*”; ₹10,000/- towards “*loss of estate*”; ₹1,00,000/- towards “*loss of consortium*” and ₹25,000/- towards “*funeral expenses*” has been granted.

3. The facts of the case as noted in the impugned Award, need no reiteration except that deceased was aged 70 years when he had met with a vehicular accident on 27th June, 2012 and before his death, he was getting pension of ₹23,354/- p.m. On the basis of evidence led, impugned Award has been rendered.

4. The challenge to the impugned Award in this appeal by learned counsel for petitioner is on the ground that “*loss of dependency*” has been erroneously calculated, as the widow is getting family pension of ₹17,365/- p.m. and it is so evident from the certificate of 16th July, 2013 (*Ex. PW3/3*) issued by the concerned Bank and so, “*loss of dependency*” would be ₹5,989/- p.m. only, i.e. the differential of pension received by deceased and family pension which she is getting.

5. Regarding deduction towards “*personal expenses*”, it is submitted that since widow of deceased alone was dependent upon him, therefore, 50% ought to be deducted towards “*personal expenses*”. It is further submitted that the compensation granted under the non-pecuniary heads, ought to be in conformity with recent decision of Constitution Bench of

Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* 2017 SCC OnLine SC 1270. So, it is submitted that the impugned Award deserves to be suitably modified.

6. On the other hand, learned counsel for respondents submits that decision in *Pranay Sethi (Supra)* is to be applied prospectively and so, compensation granted does not deserve to be reduced.

7. Upon hearing and on perusal of impugned Award, the material on record and decision cited, I find that “*loss of dependency*” has not been correctly calculated by the learned Tribunal. Indisputably, deceased was getting pension of ₹23,354/- p.m. As per evidence of PW-3, a witness from the Pension and Accounts Office, wife of deceased is getting family pension of ₹17,365/- p.m (*Ex. PW-3/3*). Pertinently, the aforesaid evidence qua the certificate *Ex. PW3/3* remains unchallenged. So far as deduction of 1/3rd towards personal expenses is concerned, I find that Supreme Court in *Sarla Verma v. DTC*, (2009) 6 SCC 121 has declared that where the deceased was married, deduction towards personal expenses should be 1/3rd. Accordingly, I find that deduction of 1/3rd towards personal expenses is rightly assessed by the Tribunal. In view thereof, the “*loss of dependency*” is recalculated while taking loss of income at ₹5,989/-p.m. and accordingly, the “*loss of dependency*” comes to ₹2,39,560 (₹71,868/- p.a. X 2/3 X 5).

8. It stands noted in the impugned Award that amount of ₹2,98,639/- was incurred on treatment of deceased and medical bills pertaining thereto are on record. These expenses are accordingly allowed. As far as compensation under the non-pecuniary heads is concerned, I find that in

Pranay Sethi (Supra), it has been categorically declared that the head of “*loss of care etc.*” does not exist. In view thereof, grant of compensation of ₹1,00,000/- under the head of “*loss of love and affection*” cannot be sustained and is accordingly set aside. Compensation of ₹10,000/- under the head of “*loss of estate*” granted by the learned Tribunal needs to be enhanced to ₹15,000/- and compensation under the head of “*loss of consortium*” needs to be reduced from ₹1,00,000/- to ₹40,000/- and “*funeral expenses*” are reduced from ₹25,000/- to ₹15,000/-. Thus, the compensation payable under the non-pecuniary heads is reduced from ₹2,35,000/- to ₹70,000/-.

9. Thus, modified compensation payable to the claimants is as under:

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S. No.	On account of	Amount (₹)
1.	Loss of dependency	₹2,39,560/-
2.	Loss of consortium	₹40,000/-
3.	Towards medical bills	₹2,98,639/-
4.	Loss of estate	₹15,000/-
5.	Funeral expenses	₹15,000/-
	Total	₹6,08,199/-

10. Since respondents No. 2 to 4 were not dependent upon the deceased, the compensation awarded shall be payable to respondent No.1 only. Vide interim order of 28th March, 2014, appellant had deposited the awarded amount with interest with the Registry of this Court and out of it

70% was permitted to be released to claimants-respondents and remaining amount was kept in fixed deposit receipt. Registry is directed to re-calculate the compensation payable and refund the excess to appellant- Insurance Company. Statutory deposit, if any, be also refunded to appellant as per rules.

11. The appeal is disposed of in the aforesaid terms.

**SUNIL GAUR
(JUDGE)**

DECEMBER 05, 2017

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