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

Date of Decision: December 06, 2017

\+   **MAC.APP. 191/2015**

NEW INDIA ASSURANCE COMPANY LTD.   ..... Appellant
Through: Mr. Ravinder Singh, Advocate

Versus

NISHANT PARVEEN & ORS.   ..... Respondents
Through: Mr. Arun Sharma, Advocate

\+   **MAC.APP. 877/2015**

NISHANT PARVEEN & ORS.   ..... Appellants
Through: Mr. Arun Sharma, Advocate

Versus

RAJU @ REYAJUDEEN & ORS (THE NEW INDIA ASSURANCE CO LTD).   ..... Respondents
Through: Mr. Ravinder Singh, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
ORAL

C.M. 27229/2015 in MAC.APP. 877/2015

Delay of 192 days in filing the accompanying appeal is condoned for the reasons stated in the application.

The application is allowed and is accordingly disposed of.

MAC.APP. 191/2015 & C.M. 3326/2015
MAC.APP. 877/2015

1. Above captioned two appeals arise out of common impugned Award of 05th January, 2015, vide which compensation of ₹9,48,103/- with interest at 9% per annum has been awarded to the Claimants who are the wife, two daughters and a son of Mohd. Arif, who died in a vehicular accident on 24th July, 2012. The facts stand noted in the impugned Award need no reproduction for the reason that challenge to the impugned Award in these two appeals is confined to the assessment of *"loss of income"* and the *"quantum of compensation"*. On the basis of evidence led, the impugned award has been rendered.

2. With the consent of learned counsel for the parties, these appeals have been heard together and are being disposed of by this common judgment.

3. Learned counsel for Insurer challenges the impugned award on the ground that the deceased did not have a permanent job and so, there is no question of grant of future prospects and that compensation granted is on the higher side. Learned counsel for Insurer relies upon a recent Constitution Bench's decision of Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* 2017 SCC OnLine SC 1270 in support of above submissions.

4. On the other hand, learned counsel for the claimants submits that *"loss of income"* has been incorrectly assessed by taking the income of

the deceased on minimum wages, even though the income tax returns were on record. It is submitted that the deceased was having a hardware shop and his income is duly reflected in the income tax returns of the years 2010-11 and 2011-12 *(Ex. PW1/2 and PW1/3)*. It is submitted that as per income tax returns, the income of deceased was ₹15,037/- per month and since the income tax returns remained unchallenged, therefore, learned Motor Accident Claims Tribunal *(henceforth referred to as the "Tribunal")* ought to have relied upon it.

5. Upon hearing and on perusal of impugned Award, evidence on record and Supreme Court's decision in *Pranay Sethi (Supra),* I find that learned Tribunal has erred in not relying upon the income tax returns (Ex. PW1/2 & PW1/3), in respect of which claimants have already deposed and the evidence of claimants remains unchallenged. In such a situation, strict rules of evidence would not apply and the learned Tribunal is not justified in not relying upon the income tax returns of the deceased on record merely because claimants had not chosen to get any witness examined from income tax department to formally prove the income tax returns in question. It is elementary rule of evidence that when evidence led remains unchallenged, it is not required to be formally proved.

6. The *"loss of dependency"* has not been correctly assessed by the learned Tribunal. It is accordingly re-assessed by taking income of the deceased to be ₹15,037/- per month and after deducting ¼ towards personal expenses, monthly income of the deceased is assessed at ₹11,277/- and by applying the multiplier of 14, it is re-assessed at ₹18,94,536/- (11,277 X 12 X 14). Since deceased was having his own

hardware shop, therefore, it cannot be said that he was not self employed. The Constitution Bench of Supreme Court in *Pranay Sethi (Supra)*, has clarified that in case of self employed persons between the age of 40 to 50 years, addition of 25% is to be made towards *"future prospects"* and so, an addition of 25% towards *"future prospects"* instead of 30% is to be made, as the deceased was 44 years of age at the time of this accident. Thus, adding 25% towards *"future prospects"*, the *"loss of dependency"* is worked out to be ₹23,68,170/-.

7. So far as non-pecuniary compensation is concerned, I find that compensation granted by learned Tribunal under this head needs to be revised in view of Supreme Court's decision in *Pranay Sethi (Supra)*. So, the compensation of ₹2,35,000/- granted under the non-pecuniary heads has to be modified. In a case of death, Supreme Court in *Pranay Sethi (Supra)* has clarified that no compensation under the head of *"loss of care etc."* is to be granted. Accordingly, compensation of ₹1,00,000/- granted by the Tribunal under the head of *"love and affection"* is disallowed. Compensation granted under the head of *"loss of estate"* is enhanced from ₹10,000/- to ₹15,000/- whereas the *"funeral expenses"* granted are reduced from ₹25,000/- to ₹15,000/- and the compensation granted under the head of *"loss of consortium"* is also reduced from ₹1,00,000/- to ₹40,000/-. Thus, the compensation payable under the non-pecuniary heads is reduced from ₹2,35,000/- to ₹70,000/-.

8. In view of the above, the total compensation payable to claimants is enhanced from ₹9,48,103/- to ₹24,38,170/- which shall carry the interest @ 9% per annum. To the aforesaid extent, the impugned Award

is modified with direction to Insurance Company to deposit the amount of enhanced compensation with the learned Tribunal within four weeks and thereafter, it be released to claimants in the manner, as indicated in the impugned Award.

9. The above captioned two appeals and pending application are accordingly disposed of with direction to refund the statutory deposit to the Insurer as per rules.

SUNIL GAUR
(JUDGE)

DECEMBER 06, 2017
r