* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: December 22, 2017

(i) + **MAC.APP. 632/2015 & CM APPL. 14190/2015**
(ii) + **MAC.APP. 634/2015 & CM APPL. 14194/2015**

UNITED INDIA INSURANCE CO LTD. ..... Appellants
Through: Mr. Pradeep Gaur, Advocate

Versus

SHIVANI SHARMA & ORS. .....Respondents
Through: Mr. Parveen Kumar Mehndiratta, Mr. S.C. Pandey & Mr. Ram Singh, Advocates for respondents-Claimants

(iii) + **MAC.APP. 735/2015**
(iv) + **MAC.APP. 739/2015**

SHIVANI SHARMA
SHIVANI SHARMA & ANR. ..... Appellants
Through: Mr. Parveen Kumar Mehndiratta, Mr. S.C. Pandey & Mr. Ram Singh, Advocates

Versus

RAJINDER SINGH & ORS (M/S UNITED INDIA INSURANCE COMPANY LTD.) .....Respondents
Through: Mr. Pradeep Gaur, Advocate for respondent-Insurer

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

<u>**JUDGMENT**</u>

ORAL

1. In a vehicular accident, which took place on 14th August, 2009, *Vikas Sharma* had died and his wife and mother had survived with grievous injuries. For the sake of convenience, United India Insurance Co. Ltd is hereinafter referred to as Insurer and legal heirs of deceased as Claimants. Despite service, owner and driver of offending vehicle in question have not appeared before the Motor Accident Claims Tribunal in question and before this Court.

2. Since the above-captioned four appeals arise out of common impugned Award of 21st May, 2015, therefore, with the consent of learned counsel for the parties, these four appeals have been heard together and by this common judgment, they are being disposed of.

3. The facts, as noted in impugned Award of 21st May, 2015, need not be recapitulated for the reason that Insurer in above-captioned first two appeals, seeks grant of recovery rights *qua* the owner and driver of offending vehicle i.e. Tanker bearing Registration No. PB-11AM-9305, whereas in the remaining two appeals, the Claimants are seeking enhancement of compensation. Deceased-*Vikas Sharma* is survived by his wife and his mother. Injured-*Shivani Sharma,* who is wife of deceased-*Vikas Sharma*, has also sought enhancement of compensation granted to her on account of injuries sustained in this accident.

4. On the basis of evidence led, learned Tribunal has granted compensation of ₹35,60,000/-to legal heirs of deceased-*Vikas Sharma* and its breakup is as under: -

Loss of dependency	*₹ 32,00,000/-*

Love and affection	*₹1,00,000/-*
Loss of consortium	*₹1,00,000/-*
Medical & incidental expenses	*₹1,00,000/-*
Loss of estate	*₹10,000/-*
Funeral expenses	*₹50,000/-*
Total	***₹35,60,000/-***

5. Injured-*Shivani Sharma* has been granted compensation of ₹3,69,000/- by learned Tribunal on account of injuries suffered by her in this accident and its breakup is as under: -

Medicines and Medical treatment	*₹2,00,000/-*
Pain and suffering	*₹50,000/-*
Loss of Amenities of life	*₹30,000/-*
Towards disfigurement	*₹25,000/-*
Conveyance	*₹20,000/-*
Special Diet	*₹5,000/-*
Attendant charges	*₹9,000/-*
Loss of Income	*₹30,000/-*
Total	***₹3,69,000/-***

6. The compensation awarded by learned Tribunal to legal heirs of deceased and to injured persons, carries interest @ 7.5% *per annum* and the mode of apportionment of liability and its disbursal is contained in paragraphs No. 85 to 89 of the Award.

7. Learned counsel for Insurer seeks grant of recovery rights *qua* the driver and owner of the offending vehicle, as Notice under Order 12 Rule 8 of *CPC*, has been served upon owner of the offending vehicle, but it

was not responded to and since the driving licence was not produced and so, it is submitted that the liability to pay compensation, as granted by learned Tribunal, is of owner and driver of the offending vehicle i.e. Tanker in question. Thus, it is submitted that learned Tribunal has erroneously denied recovery rights to Insurer by observing that Insurer has not shown violation of any term or condition of the Insurance Policy. Further, learned counsel for Insurer also seeks reduction of compensation granted by learned Tribunal under the non-pecuniary heads.

8. On the other hand, to refute the aforesaid stand, learned counsel for Claimants-Injured relies upon decision of High Court of Orissa in *New India Assurance Co. Ltd. V. Debajani Sahu and Others,* 1999 (1) T.A.C. 597 (Ori.) and seeks enhancement of compensation granted by submitting that the compensation by learned Tribunal is inadequate.

9. Upon hearing and on perusal of the impugned Award and the evidence on record, I find that the liability aspect has been already considered by me while deciding connected appeals i.e. MAC. APPs 636/2015 & 637/2015 pertaining to this very accident and in the said decision rendered on 20th December, 2017, this Court had already ruled that the Insurer shall have the recovery rights *qua* the driver and owner of the offending vehicle i.e. *Tanker bearing Registration No. PB-11AM-9305.*

10. So far as deduction of 50% on account of contributory negligence of deceased-*Vikas Sharma* is concerned, I find on perusal of the site plan of the spot and evidence of witnesses on record that the accident had taken place because the offending vehicle i.e. the tanker in question was overtaking the jeep and it is not exactly a case of head on collusion. The

tanker had struck the right side of the car and the learned Tribunal has erred in holding that PW-2 was talking with the driver of the vehicle. In the face of evidence on record, it becomes clear that deceased-*Vikas Sharma* was driving the offending vehicle and his wife was sitting by his side and his mother-*Smt. Lakhender Jyoti Sharma* was sitting on the rear side with her husband. On re-appreciation of evidence on record, I am of the opinion that finding of contributory negligence is erroneous and is hereby set aside.

11. During the course of hearing, it was vehemently urged by learned counsel for Insurer that deceased-*Vikas Sharma* was unemployed for about two years prior to this accident and so, his income has been arbitrarily assessed by the learned Tribunal at ₹6,00,000/- per annum on the basis of his earlier income. It is submitted by learned counsel for Insurer that on the basis of minimum wages of a graduate, income of the deceased-*Vikas Sharma* ought to have been assessed.

12. It is to be kept in mind that deceased-*Vikas Sharma* was an Occupational Therapist and while considering his income of two years prior to this accident, learned Tribunal has assessed his income to be ₹6,00,000/- per annum. It is pertinent to note that two years prior to this accident, *Vikas Sharma* was permanent resident of UK and was earning Thirty Five thousand pounds per annum.

13. In the facts and circumstances of this case, considering the qualifications of deceased *Vikas Sharma* and his past record, learned Tribunal has rightly assessed his income to be ₹6,00,000/- per annum . So far as the submission of Insurer of deceased *Vikas Sharma* being idle for two years prior to the accident in question, I find that widow of deceased

Vikas Sharma in her evidence has stated that while in India, deceased-*Vikas Sharma* had started consultancy business and was also contemplating to go back to UK, as he had taken two years' break from his job for enhancing the future prospects.

14. So far as loss of dependency on account of death of *Vikas Sharma* is concerned, I find that the learned Tribunal has taken the dependency to be ₹4,00,000/- after deducting1/3rd towards personal expenses. However, the learned Tribunal has erred in not taking into account the Income Tax Returns (ITR) of widow of the deceased, which shows that she had a taxable income of ₹2,54,000/- in the financial year 2009-10. While taking into consideration the ITR of widow of deceased of *Vikas Sharma*, the loss of dependency is calculated at ₹1,46,000/- p.a.. While noting that deceased-*Vikas Sharma* was aged 33 years at the time of the accident in question, learned Tribunal has refused to grant compensation under the head of *"future prospects"* by simply observing that deceased-*Vikas Sharma* was not having a permanent job. In view of Supreme Court's decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* 2017 SCC OnLine SC 1270, even self-employed persons are entitled to grant of compensation under the head of *"future prospects"*. Since deceased-*Vikas Sharma* was a self employed professional aged 33 years at the time of accident in question, therefore, he is entitled to addition of 40% of the income towards *"future prospects"*. While taking the income of deceased-*Vikas Sharma* to be ₹1,46,000/- *per annum* and after adding 40% towards *"future prospects",* the *"loss of dependency"* is assessed at ₹2,04,400/-. By applying the multiplier of 16, the total *"loss of dependency"* is assessed at ₹32,70,400/- instead of ₹32,00,000/- as

granted by learned Tribunal.

15. Supreme Court in *Pranay Sethi (supra)* has declared that the head relating to *"loss of care etc."* does not exist, therefore, grant of compensation of ₹1,00,000/- under the head of *"loss of love and affection"* cannot be sustained and is accordingly set aside. In view of Supreme Court's decision in *Pranay Sethi (supra),* the *"funeral expenses"* granted to legal heirs of deceased-*Vikas Sharma* are accordingly reduced from ₹50,000/- to ₹15,000/- but compensation of ₹10,000/- under the head of *"loss of estate"* is enhanced to ₹15,000/- and compensation under the head of *"loss of consortium"* is reduced from ₹1,00,000/- to ₹40,000/-. However, award of ₹1,00,000/- under the head of *"medical and incidental expenses"* is not disturbed. Thus, the compensation payable to legal heirs of deceased *Vikas Sharma* in view of Supreme Court's decision in *Pranay Sethi (Supra)*, is re-assessed as under:-

Loss of dependency	*₹ 32,70,400/-*
Loss of consortium	*₹ 40,000/-*
Medical & incidental expenses	*₹ 1,00,000/-*
Loss of estate	*₹ 15,000/-*
Funeral expenses	*₹ 15,000/-*
Total	***₹ 34,40,400/-***

16. In view of aforesaid, compensation of ₹35,60,000/- granted to legal heirs of deceased-*Vikas Sharma* by learned Tribunal is reduced to ₹34,40,400/-.

17. So far as compensation granted to injured-*Shivani Sharma* is

concerned, I find that there is no scope for any reduction or any enhancement of compensation granted under the head of *'medicines and medical treatment'*. However, compensation granted to her under the non-pecuniary heads needs to be enhanced, as a co-ordinate Bench of this Court in *Reliance General Insurance Company Ltd. v. Amarjeet Singh and Others*, 2017 SCC OnLine Del 12241, in which injured had suffered disability of 60%, has granted compensation of ₹1,50,000/- each under the heads of *'pain and suffering'* and *'loss of amenities of life'*. The disability suffered by injured-*Shivani Sharma* in the accident in question stands already noticed by learned Tribunal in paragraphs No.71 to 74 of impugned Award, which needs no reproduction. In the facts and circumstances of this case, compensation granted to injured-*Shivani Sharma* under the head of *'pain and suffering'* is enhanced from ₹50,000/- to ₹1,50,000/- and under the head of *'loss of amenities of life'*, it is enhanced from ₹30,000/- to ₹1,50,000/-. A paltry compensation of ₹25,000/- only has been granted by learned Tribunal to injured-*Shivani Sharma* on account of her left hand becoming totally dysfunctional due to this accident. To say the least, the compensation granted on account of disfigurement of her left hand is wholly inadequate. In the facts and circumstances of this case, the compensation granted under this head on account of disfigurement is enhanced from ₹25,000/- to ₹1,00,000/-.

18. The facts and circumstances of this case persuade this Court to hold that compensation of ₹20,000/-, ₹5,000/- and ₹9,000/- granted by learned Tribunal to injured-*Shivani Sharma* under the heads of *'Conveyance'*, *'Special Diet'* and *'Attendant Charges'* is wholly inadequate and it is accordingly enhanced to ₹50,000/-, ₹25,000/- and

₹30,000/- respectively. It is matter of record that prior to this accident, injured-*Shivani Sharma* was working with an NGO and after this accident, she is not able to work in that NGO. To this effect, the evidence of injured-*Shivani Sharma* remains unrebutted. Further, as per Income Tax Returns of injured-*Shivani Sharma* for the assessment year 2009-10, her income from NGO was ₹33,910/-, which is rounded off to ₹34,000/- *per annum*. Since injured-*Shivani Sharma* is not able to earn anything from NGO after this accident, therefore, *'loss of future income'* to her is substantial. At the time of this accident, she was 38 years and so, in view of Supreme Court's decision in *Sarla Verma v. DTC,* (2009) 6 SCC 121, the applicable multiplier would be of 15. Thus, *'loss of future income'* to injured-*Shivani Sharma* comes to ₹5,40,000/- (₹5,10,000/- + ₹30,000/-). In view thereof, compensation of ₹30,000/- granted to her by learned Tribunal under the head of *'loss of income'* is found to be wholly insufficient and is accordingly enhanced to ₹5,40,000/- under the head of *'loss of income/future income'*. Resultantly, the breakup of the modified compensation granted to injured-*Shivani Sharma* is as under: -

Medicines and Medical treatment	*₹2,00,000/-*
Loss of Income/future income (₹5,10,000/- + ₹30,000/-)	*₹5,40,000/-*
Pain and suffering	*₹1,50,000/-*
Loss of Amenities of life	*₹1,50,000/-*
Towards disfigurement	*₹1,00,000/-*
Conveyance	*₹50,000/-*
Special Diet	*₹25,000/-*

Attendant charges	*₹30,000/-*
Total	***₹12,45,000/-***

19. In view of Supreme Court's Constitution Bench decision in *Pranay Sethi (Supra),* the rate of interest on the modified compensation shall be @ 9% *per annum* instead of 7.5% *per annum* as granted by learned Tribunal. The compensation as modified above shall be payable, in the first instance, by Insurer with right to recover it from the owner and driver of the offending vehicle i.e. *Tanker bearing Registration No. PB-11AM-9305.*

20. With aforesaid modifications, the above-captioned four appeals and the applications stand disposed of.

SUNIL GAUR
(JUDGE)

DECEMBER 22, 2017
s/r