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

Date of Decision: December 11, 2017

\+   **<u>MAC.APP. 750/2015 & C.M. 31347/2015</u>**

THE NEW INDIA ASSURANCE CO LTD ..... Appellant
Through: Mr. Pankaj Seth, Advocate

Versus

HARPAL SINGH & ORS. ..... Respondents
Through: Mr. Devender Kumar Sisodia, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

<u>JUDGMENT</u>
ORAL

1. Impugned award of 17th July, 2015 grants compensation of ₹47,30,808/- with interest @ 9% p.a. on account of death of one- *Ravinder Kumar* in a vehicular accident on 13th February, 2008. Respondent-claimant- *Harpal Singh,* father of the deceased, is an eye witness of this accident and the manner in which this accident took place, as unfolded by him in his evidence, is as under:-

> *"He further stated that on 13/02/2008, his son Ravinder Kumar Pundir was going from Raj Nagar Distt. Centre Ghaziabad to his home by car bearing no. DL-1CL-0407 and at about 11.30 PM he met with an accident due to the negligence on the part of driver of the Eicher Centre bearing no.UP-14-AK-9008 which was standing an parked*

in between the road in a very rash haphazard manner and without any light and indicator. He further stated that he has seen the scene of the accident with his own eyes as the car bearing No. DL-1CL-0407 Alto Car was under the back portion of the said offending vehicle No. UP-14AK-9008."

2. Appellant is the insurer of the offending vehicle i.e. the Canter bearing No. UP14 AK 9008. Respondents-claimant are the parents, wife and a minor child of the deceased, out of whom, widow and father of deceased and an officer of appellant-Company had deposed before the Tribunal. On the strength of evidence on record, impugned Award has been rendered. Breakup of compensation granted, as spelt out in paragraph No.22 of the impugned Award, is as under:-

S. No.	Head	Amount
1	Loss of dependency (Rs.2,56,224/- X 17)	Rs.43,55,808/-
2	Loss of love and affection to child	Rs.1,00,000/-
3	Loss of love and affection to parents	Rs.1,00,000/-
4.	For funeral expenses	Rs.25,000/-
5	Loss of estate	Rs.1,00,000/-
6	Loss of consortium	Rs.1,00,000/-
	Total	**Rs.47,80,808/-**

3. The awarded compensation has been apportioned by the learned Motor Accident Claims Tribunal *(henceforth referred to as the "Tribunal")* in the following manner:-

S. No.	Appellants	Amount in Rs.

1	Appellant No.1 Harpal Singh (Father)	Rs.4,73,000/-
2	Appellant No.2 Santosh Devi (Mother)	Rs.4,73,000/-
3.	Appellant No.3 Neelam (Widow)	Rs.18,92,404/-
4.	Appellant No.4 Master Shrasthra (Minor Son)	Rs.18,92,404/-

4. In this appeal, the precise submission of learned counsel for appellant is that respondent No.6, who is the owner of offending vehicle, was not having a fitness certificate in respect of Canter i.e. the offending vehicle in question on the date of the accident and so, liability, if any, to pay the compensation is of sixth respondent and not of appellant. To submit so, attention of this Court is drawn to deposition of appellant's Assistant Manager (R3W1) to show that offending vehicle in question was not having a Fitness Certificate on the date of accident. It is pointed out by appellant's counsel that fifth and sixth respondents have not led any evidence to show that on the date of accident, the offending vehicle i.e. the Canter in question, was having fitness certificate. Attention of this Court is also drawn to the site plan of the spot to show that there was contributory negligence of respondents-claimants, as the insured vehicle was parked on the road side and since deceased's car had hit the Canter in question from behind, therefore, there is 50% contributory negligence and learned Tribunal has erred in not holding so. On the quantum aspect, learned counsel for appellant has drawn attention of this Court to a recent Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* 2017 SCC OnLine SC 1270 to

submit that the wife of deceased is not entitled to any compensation, as she had remarried and that no compensation under the head of *"love and affection"* is payable and also that the compensation payable under the non-pecuniary heads deserves to be reduced.

5. On the contrary, learned counsel for respondents No. 5 & 6 support the impugned Award and submit that all what was required under the Insurance Policy, was that the vehicle in question was required to carry a valid permit, which it was carrying and so, the liability to pay the compensation is wholly and squarely on the appellant. Reliance is placed upon a Single Bench decision of High Court of Bombay in *New India Assurance Co. Ltd. Vs. Mona & Ors.* III (2011) ACC 686 to submit that upon remarrying, right of widow of deceased to claim compensation does not get forfeited, as Motor Vehicles Act is a social legislation.

6. Upon hearing and on perusal of impugned Award, site plan of the spot and evidence on record and the decisions cited, I find that Canter in question was not on the side of the road. Rather, it appears to be very much on the road, without there-being any blinkers or red flags put on it, as the accident in question had taken place at night. So, the plea of contributory negligence is hereby repelled.

7. So far as the question of there being no Fitness Certificate of the Canter in question on the date of accident is concerned, I find that as per Insurance Policy *(Ex.R3W1),* the only requirement for issuance of this policy was a valid permit. Since it is not disputed that the offending vehicle in question was having a valid permit, so the plea of there being no Fitness Certificate, has no substance particularly when, the appellant

had issued the Insurance Policy from 24th December, 2007 up to 23rd December, 2008, without any rider. Since the fitness of insured vehicle was to lapse on 8th January, 2008, therefore, renewal of Insurance Policy ought to have been conditional.

8. High Court of Bombay in its decision in *Mona (Supra)*, has held that there is no embargo to grant compensation to the widow even upon her remarriage, as Motor Vehicles Act is a social legislation, but the dependency aspect has to be considered, which has not been done in *Mona (Supra)* and so, this decision has no persuasive value.

9. During the course of hearing, it was brought to the notice of the Court by learned counsel for respondents-claimants that father of deceased has retired from Army and is a pensioner. So, mother of deceased would be dependent upon him and she cannot be taken to be dependent upon her son. Therefore, compensation granted to parents of deceased under the head *"loss of dependency"* is disallowed. Since widow of deceased has remarried, therefore, compensation granted to her under the head of *"loss of dependency"* and *"loss of consortium"* is disallowed. However, compensation granted to *Master Shrasthra*, the minor son, under the head of *"loss of dependency"*, is maintained. In view of above narration, it is held that *Master Shrasthra*, the minor son of deceased is the only dependant.

10. In view of recent Constitution Bench's judgment of Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* 2017 SCC OnLine SC 1270, no compensation is payable under the head of *"loss of care etc,"* and so compensation of ₹1,00,000/- each granted to parents

and minor child of the deceased under the head of *"loss of love and affection"* is disallowed. Hence, the compensation payable is re-calculated as under:-

S. No.	Head	Amount
1	Loss of dependency (₹2,56,224/- X 50% X 17 X 150/100)	₹32,66,856/-
2.	For funeral expenses	₹15,000/-
5	Loss of estate	₹15,000/-
	Total	**₹32,96,856/-**

11. The afore-noted compensation of ₹32,96,856/- with interest @ 9/% p.a. shall be payable to the only dependant of deceased's minor son-*Master Shrasthra*, which shall be invested into fixed deposit receipt till he attains the age of twenty one years, subject to the riders put by the learned Tribunal in paragraphs No.30 to 36 of the impugned Award.

12. Vide interim order of 5th October, 2015, appellant had deposited the awarded amount with interest with the Registry of this Court and out of it 50% was permitted to be released to claimants-respondents and remaining amount was kept in fixed deposit receipt. Learned Tribunal shall ensure that the interim compensation paid to the parents and widow of the deceased is transmitted by them to the account of minor child-*Master Shrasthra*. Registry is directed to release the balance payable to respondent-claimants in terms of modification as ordered above and refund the excess amount to appellant- Insurance Company. Statutory deposit, if any, be refunded to appellant as per rules.

13. With aforesaid directions, this appeal and the application are disposed of.

SUNIL GAUR
(JUDGE)

DECEMBER 11, 2017
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