

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

Date of Decision: December 14, 2017

(1) + **MAC.APP. 1022/2015 & CM 32613/2015**
(2) + **MAC.APP. 1023/2015 & CM 32615/2015**
(3) + **MAC.APP. 1028/2015 & CM 32670/2015**

**UTTAR PRADESH STATE ROAD TRANSPORT
CORPORATION** Appellant

Through: Ms. Gariam Prashad and Mr.
Shadab Khan, Advocates

versus

(1) **BALA DEVI & ORS**
(2) **KHEM CHAND & ORS**
(3) **RAM SAHAI & ORS**

.....Respondents

Through: Mr. Shyam Singh Sisodia,
Advocate for respondents-claimants

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above-captioned three appeals arise out of a vehicular accident which took place on 22nd December, 2012 and in this accident, *Rajan Pal Singh @ Khajan Singh, Kamlesh and Balbir @ Billu* had died. Vide impugned Award of 1st October, 2015, learned *Motor Accident Claims Tribunal, Shahdara, Karkardooma Courts, Delhi* (hereinafter referred to as the 'Tribunal') has granted compensation of ₹13,12,574/-, ₹15,73,718/- and ₹17,35,564/- alongwith interest @ 12% per annum to

legal heirs of deceased-Rajan Pal Singh @ Khajan Singh, Kamlesh and Balbir @ Billu.

2. The facts, as noted in impugned Award, are as under: -

“The facts common to all the petitions are like this. On 22.12.2012 at 8.30 p.m. deceased Rajan Pal Singh @ Khajan Singh, deceased Kamlesh, deceased Balbir @ Billu, Bala Devi and Khem Chand were going in a car bearing no.DL-8CNB-1071 being driven by Balbir @ Billu. They reached near Bamba Village Virkheda, PS, Sikandrabad, U.P. One UP Roadways Bus bearing registration no. UP-75M-2396 being driven by respondent no.1 in a high speed and in a rash and negligent manner hit the car as a result all the occupants of the car sustained injuries. Rajan Pal Singh @ Khajan Singh, Kamlesh and Balbir @ Billu sustained injuries and succumbed to the injuries. Bala Devi and Khem Chand sustained grievous injuries. They were taken to District Hospital, Bulandshahar, U.P. The autopsy was conducted in the hospital. Injured were medically treated. FIR no.524/12, Crime No.856/12 U/s 279/304A/338/427 IPC PS, Sikandrabad was registered against respondent no.1/driver of the bus. The accident has taken place due to rash and negligent driving of respondent no.1. Respondent no.2 is owner of the bus.”

3. Since these three appeals arise out of one vehicular accident, therefore, with consent of learned counsel for the parties, these appeals have been heard together and are being disposed of by this common judgment.

4. The challenge to impugned Award by learned counsel for appellant is on the ground that instant case is of contributory negligence, but the driver, owner and the insurer of the Maruti Car in question, have not been

arrayed as parties and that the plea of contributory negligence raised by learned counsel for appellant before learned Tribunal has not been dealt with in the impugned Award. It is further submitted that compensation granted under the non-pecuniary heads ought to be suitably reduced in light of recent Constitution Bench decision of Supreme Court in *National Insurance Company Limited v. Pranay Sethi and Ors.* 2017 SCC OnLine SC 1270. It is also submitted by learned counsel for appellant that the interest @ 12% *per annum*, granted by learned Tribunal on the awarded amount is exorbitant and it needs to be reduced to 9% *per annum* in light of recent Constitution Bench decision of Supreme Court in *Pranay Sethi (supra)*.

5. On the contrary, learned counsel for respondents-claimants relies upon Supreme Court's decision in *Kumari Kiran Thr. Her Father Harinarayan v. Sajjan Singh & Ors.* X (2014) SLT 544 to submit that when two vehicles coming from opposite directions collide, the position of the vehicles and its direction, etc. depends on a number of factors like the speed of vehicles, intensity of collision, reason of collision, place at which one vehicle hit the other, etc.. Reliance is also placed by learned counsel for respondents-claimants upon Supreme Court's decision in *Sandhya Rani Debbarma & Ors. V. National Insurance Co. Ltd. & Anr.* IV (2017) SLT 332 to submit that compensation of ₹1 lac each has been rightly granted under the non-pecuniary heads i.e. '*loss of consortium*', '*loss of love and affection*' and '*loss of estate*'. Thus, it is submitted that compensation granted vide impugned Award is just and reasonable and so, these appeals deserve dismissal. Nothing else is urged on behalf of either side.

6. Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find on a bare perusal of the site plan of the spot, that the plea of contributory negligence put forth by appellant is not substantiated and hence, it is repelled. During the course of hearing, learned counsel for respondents-claimants urged that compensation towards '*future prospects*' ought to have been granted. To say the least, respondents-claimants, without filing cross-objections, cannot claim the grant of '*future prospects*' in appeal filed by owner and so, this plea is outrightly negated.

7. So far as grant of compensation under the non-pecuniary heads is concerned, I find that compensation granted by learned Tribunal to respondents-claimants in these three appeals needs to be reduced in light of recent Constitution Bench decision of Supreme Court in *Pranay Sethi (supra)*. Reliance placed by learned counsel for respondents-claimants upon earlier decision of Supreme Court in *Kumari Kiran (supra)* is of no avail as the Constitution Bench of Supreme Court in its later decision in *Pranay Sethi (supra)* has clarified that the head of '*loss of care, etc.*' does not exist and so, compensation granted in these three appeals under the head of '*loss of love and affection*' is disallowed. Likewise, since no compensation has been granted under the non-pecuniary head of '*loss of expectancy of life*' by Supreme Court in *Pranay Sethi (supra)*, therefore, compensation granted by learned Tribunal in these three appeals under this head is also disallowed. Similarly, the compensation granted under the heads of '*loss of consortium*', '*loss of estate*' and '*funeral expenses*' also requires to be reduced to ₹40,000/-, ₹15,000/- and ₹15,000/- respectively, in light of decision in *Pranay Sethi (supra)*.

8. So far as the interest @ 12% *per annum* granted by learned Tribunal on the awarded amount is concerned, I find that it is on higher side and needs to be reduced to 9% *per annum* in light of recent Constitution Bench decision of Supreme Court in *Pranay Sethi (supra)*. It is ordered accordingly.

9. In view of afore-narration, the compensation granted to respondents-claimants is re-assessed as under:-

In case of Rajan Pal Singh @ Khajan Singh

S.No.	Name of Heads	Amount
1.	Loss of dependency/contribution to the family	₹5,87,574/-
2.	Loss of consortium	₹40,000/-
3.	Loss of estate	₹15,000/-
4.	Funeral expenses	₹15,000/-
Total		₹6,57,574/-

In case of Kamlesh

S.No.	Name of Heads	Amount
1.	Loss of dependency/contribution to the family	₹8,48,718/-
2.	Loss of consortium	₹40,000/-
3.	Loss of estate	₹15,000/-
4.	Funeral expenses	₹15,000/-
Total		₹9,18,718/-

In case of Balbir @ Billu

S.No.	Name of Heads	Amount
1.	Loss of dependency/contribution to the family	₹11,10,564/-
2.	Loss of consortium	₹40,000/-
3.	Loss of estate	₹15,000/-
4.	Funeral expenses	₹15,000/-
Total		₹11,80,564/-

10. In view of above, compensation granted to legal heirs of deceased- *Rajan Pal Singh @ Khajan Singh* is reduced from ₹13,12,574/- to ₹6,57,574/-. Similarly, compensation granted to legal heirs of deceased- *Kamlesh* is reduced from ₹15,73,718/- to ₹9,18,718/-. Likewise, compensation granted to legal heirs of deceased- *Balbir @ Billu* is reduced from ₹17,35,564/- to ₹11,80,564/-. The aforesaid modified compensation shall carry interest @ 9% *per annum*. The mode and manner of disbursement of afore-said modified compensation to respondents-claimants shall be in the same ratio as indicated in impugned Award.

11. The above-captioned three appeals are accordingly disposed of with direction to Registry to release modified compensation granted to respondents-claimants and to refund the statutory deposit, if made by appellant, alongwith excess amount, if any, deposited by appellant in all these appeals.

12. The above-captioned three appeals and the applications are disposed of in above terms.

(SUNIL GAUR)
JUDGE

DECEMBER 14, 2017

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