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

% ***Date of Judgment: February 22, 2018***

\+ **<u>MAC.APP. 590/2014, CM Nos.10741/2014, 20565/2014 & 41375/2016</u>**

NATIONAL INSURANCE CO. LTD ..... Appellant

Through: Mr.Arihant Jain, Advocate for Ms.Shantha Devi Raman, Advocate

versus

SMT. BIMLA & ORS ..... Respondents

Through: Mr.Kamaldeep, Advocate

\+ **<u>MAC.APP. 51/2015, CM Nos.28655/2015 & 20436/2017</u>**

BIMLA & ORS ..... Appellants

Through: Mr.Kamaldeep, Advocate

versus

NATIONAL INSURANCE CO LTD ..... Respondent

Through: Mr.Arihant Jain, Advocate for Ms.Shantha Devi Raman, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

<u>JUDGMENT</u>
(ORAL)

1. The above captioned two appeals are directed against Award of 22nd March, 2014 vide which compensation of ₹13,05,000/- with interest @ 9% per annum has been awarded to Claimants. In the above captioned first appeal, the Insurer seeks reduction of quantum of compensation granted, whereas in the above captioned second appeal, enhancement of compensation is sought by Claimants. Since these two appeals arise out of

common Award of 22nd March, 2014, therefore, both these appeals have been heard together and are being decided by this common judgment. The facts as noted in opening paragraphs of the impugned Award are as under:-

> *"Brief facts of the case are that on 09.06.09 the deceased was going with his cousin brother Naveen on the motorcycle from Gurgaon to Green Park via Ber Sarai. He was sitting on the back seat of the motorcycle bearing no. RJ 19 SM 7309. At about 2.00 PM when they reached near Ber Sarai market a bus bearing No. DL 1P B 7255 came towards them at a high speed rashly and negligently and hit them from left side. They fell down and sustained injuries. The cousin brother of the deceased took the deceased to Trauma Centre in a TSR where he was declared brought dead. A case vide FIR No. 209/09 was registered at police station Hauz Khas. It was stated that the deceased was working with Manish Logistic Pvt. Ltd., Gurgaon and earning Rs. 10,000/- p.m. He was 19 years of age. It was stated that the offending vehicle was being driven by respondent no: 1, owned by respondent no: 2 and insured with respondent no: 3."*

2. The Motor Accident Claims Tribunal (hereinafter referred to as 'the Tribunal') has relied upon the evidence of mother of Mandeep who had died in a vehicular accident on 9th June, 2009. The Tribunal has also relied upon the evidence of injured (PW-2) and the other evidence on record to award the compensation as noted hereinabove. Mandeep was aged 19 years on the day of this vehicular accident and as per the evidence of injured (PW-2), deceased was working in Manish Logistics and was earning ₹10,000/- per month. It is matter of record that the aforesaid evidence remains unchallenged. The Tribunal has calculated the loss of dependency by adding 50% towards future prospects and since deceased was unmarried, one-half has been deducted towards the personal expenses of the deceased

and by applying the multiplier of 13, the loss of dependency has been assessed at ₹11,70,000/-. Compensation of ₹1,00,000/- has been awarded under the head of '*Love and Affection*' and '*Funeral Expenses*' of ₹25,000/- have been granted by the Tribunal. Under the head '*Loss of Estate*' ₹10,000/- has been granted. The break-up of compensation awarded by the Tribunal is as under:-

1)	*Loss of Dependency*	=	*Rs.11,70,000/-*
2)	*Loss of Love and Affection*	=	*Rs. 1,00,000/-*
3)	*Funeral Expenses*	=	*Rs. 25,000/-*
4)	*Loss of Estate*	=	*Rs. 10,000/-*
	Total	=	*Rs.13,05,000/-*

3. The challenge to the impugned award by learned counsel for Insurer is on the ground that there is no documentary evidence on record regarding income of the deceased and addition towards future prospects has to be 40% and not 50%. To seek reduction of the compensation under the non-pecuniary heads, reliance is placed upon decision of the Constitution Bench of the Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* 2017 SCC OnLine SC 1270.

4. On the contrary, learned counsel for the Claimants submits that the compensation granted by the Tribunal is inadequate and it needs to be suitably enhanced by applying multiplier as per the age of the deceased. To submit so, attention of this Court is drawn to a Constitution Bench decision of the Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* 2017 SCC OnLine SC 1270. So, it is submitted that the compensation granted needs to be suitably enhanced.

5. Upon hearing and on perusal of impugned award, evidence on record and the decision of Constitution Bench of Supreme Court in *Pranay Sethi* (supra), I find that evidence regarding the income of the deceased remains unchallenged and so the income of the deceased has to be taken as ₹10,000/- per month. So far as addition towards future prospects is concerned, it ought to be 40% and not 50%. While taking the annual income of the deceased to be ₹1,20,000/-, 40% is added towards future prospects i.e. ₹48,000/- and the annual income of the deceased is thus assessed at ₹1,20,000/- + ₹48,000/- = ₹1,68,000/-. After deducting one-half towards personal expenses, the '*Loss of Income'* is re-assessed at ₹84,000/- per annum. The Constitution Bench of Supreme Court in *Pranay Sethi* (supra) has now categorically declared that the age of deceased should be the basis for applying the appropriate multiplier and so, applying the dictum of Supreme Court's decision in *Pranay Sethi* (supra) to the facts of the instant case, multiplier of 18 is applied as the deceased was aged 19 years on the day of the accident. Thus, the '*Loss of Dependency*' is re-assessed at ₹84,000/- x 18 = ₹15,12,000/-.

6. The compensation granted by Tribunal under the non-pecuniary heads needs to be brought in tune with the decision in *Pranay Sethi* (supra). Accordingly, compensation granted by the Tribunal under the non-pecuniary heads is reduced from ₹1,35,000/- to ₹30,000/-. The compensation of ₹1,00,000/- granted by the Tribunal under the head of '*Loss of Love and Affection*' is disallowed as the Supreme Court in *Pranay Sethi* (supra) has clarified that the head relating to '*Loss of Care*' etc. does not exist. Accordingly, the compensation payable to the Claimants is re-assessed as under:-

1.	*Loss of dependency:*	*₹15,12,000/-*
2.	*Loss of estate*	*₹15,000/-*
3.	*Funeral Expenses*	*₹15,000/-*
	Total compensation:	₹15,42,000/-

7. In light of the aforesaid, compensation of ₹13,05,000/- granted by the Tribunal, is enhanced to ₹15,42,000/- which shall carry interest @ 9% per annum. The ratio and mode of disbursement of the compensation shall be as per the impugned Award. Registry is directed to refund the statutory deposit as per rules subject to deposit of enhanced compensation by the Insurer and thereafter, the compensation be released to the Claimants in terms of the judgment but in the same ratio as indicated by the Tribunal in the impugned Award.

8. With aforesaid directions, both the appeals are accordingly disposed of.

(SUNIL GAUR)
JUDGE

FEBRUARY 22, 2018
mamta