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

Date of Decision: February 07, 2018

\+   **MAC.APP. 130/2014**

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

versus

POONAM & ORS ..... Respondents
Through: Mr.Navneet Goyal, Advocate for R-1 and R-2

\+   **MAC.APP. 537/2016**

POONAM & ANR ..... Appellants
Through: Mr.Navneet Goyal, Advocate

versus

NEW INDIA ASSURANCE CO LTD & ORS (NEW INDIA ASSURANCE CO LTD) ..... Respondent
Through: Mr.Ravinder Singh, Advocate and Mr.Raveesha Gupta, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
ORAL

1. The above captioned two appeals are directed against common impugned award of 19th December, 2013 vide which compensation of ₹19,76,776/- with interest @ 7.5% per annum has been granted to claimants on account of death of Akhil Bhardwaj aged 20 years in a vehicular accident on 4th August, 2011. The facts are already noticed in the impugned award and so need no reproduction. Suffice to note that on the basis of evidence of mother of deceased, eye witness account and the formal evidence, impugned award has been rendered. Learned Motor Accident Claims Tribunal (hereinafter referred to as the Tribunal) has assessed the income of deceased on the minimum wages of a matriculate as on 1st April, 2011 and added 50% towards future prospects and has deducted one half towards the personal living expenses of deceased and thereafter has computed the loss of dependency as under:-

a)	*Minimum wages of matriculate person as on 01/04/2011*	*₹7,826/-*
b)	*50% addition towards future prospects*	*₹3,913/-*
		₹11,739/-
c)	*1/2 deductions on personal living expenses*	*- ₹5,869.5/-*
		₹5,869.5/-

2. The breakup of compensation granted under non-pecuniary heads by the Tribunal is as under:-

1.	*Medicines and Treatment*	*=₹8,55,700/-*
2.	*Loss of dependency (5,869.5/-x12x14)*	*=₹9,86,076/-*

3.	*Loss of Love and affection*	*=₹1,00,000/-*
4.	*For funeral expenses*	*=₹ 25,000/-*
5.	*Loss of estate*	*=₹ 10,000/-*
Total		*=₹19,76,776/-*

(Rupees Nineteen Lacs, Seventy Six Thousand Seven Hundred and Seventy Six only)

3. Since these above captioned appeals arise out of common impugned award, therefore they have been heard together and are being decided by this common judgment.

4. Learned counsel for Insurer relies upon a Constitution Bench decision of the Supreme Court in *National Insurance Co.Ltd. Vs. Pranay Sethi & Ors.* 2017 ACJ 2700 to submit that addition of 50% towards future prospects is unwarranted and the compensation granted under non-pecuniary heads is on the higher side. So, it is submitted that the compensation granted vide impugned award deserves to be modified.

5. On the other hand, learned counsel for Claimants submits that in view of Constitution Bench decision of Supreme Court in *Pranay Sethi*'s case (supra) the age of deceased is to be made basis for applying the multiplier and the learned Tribunal has erred in relying upon the age of the claimants and adopted inappropriate multiplier. It is submitted on behalf of claimants that the interest on the compensation amount has to be 9% per annum instead of 7.5% per annum as has been granted by the Tribunal and to submit so, reliance is placed upon the decision in *Pranay Sethi*'s case (supra).

6. Upon hearing and on perusal of the impugned award, evidence on record and the decision cited, I find that learned Tribunal has erred in applying the multiplier of 14 while taking into consideration the age of the claimants whereas as per Supreme Court's decision in *Pranay Sethi*'s case (supra), the multiplier has to be on the basis of the age of the deceased. Learned counsel for Claimants submits that the applicable multiplier is of 17 and not of 14. So far as addition of 50% towards future prospects is concerned, I find that in view of Supreme Court's decision in *Pranay Sethi*'s case (supra), addition of 40% towards future prospects and not 50% is to be made in the actual salary of deceased.

7. While taking the income of the deceased at ₹7,826/- and adding 40% towards future prospects i.e. ₹3,130/- and deducting one half towards personal living expenses of deceased, the loss of income is re-assessed at ₹5,478/- per month. In light of the Supreme Court's decision in *Pranay Sethi*'s case (supra), loss of dependency is re-assessed as (₹5,478/-x12x17) = ₹11,17,512/-. The compensation granted under the head of loss of love and affection is disallowed in view of dictum of Suprme Court in *Pranay Sethi*'s case (supra). 'Funeral expenses' are also reduced from ₹25,000/- to ₹15,000/-.

8. The compensation granted by the Tribunal under the head of 'loss of estate' is enhanced from ₹10,000/- to ₹15,000/- to bring it in tune with the parameters laid down by the Supreme Court in *Pranay Sethi*'s case (supra). Thus, the total compensation payable is re-assessed as under:-

1. Medicines and Treatment =₹8,55,700/-

2.	*Loss of dependency (₹5,478x12x17)*	*=₹11,17,512/-*
3.	*Funeral expenses*	*=₹ 15,000/-*
5.	*Loss of estate*	*=₹ 15,000/-*
Total		*=₹20,03,212/-*

9. The re-assessed compensation shall carry interest @ 9% per annum instead of 7.5% as awarded by the Tribunal.

10. These two appeals are disposed of while modifying the impugned award to the aforenoted extent while making it clear that the apportionment of liability and mode of dispersal would be as per the impugned award. As per order of 10th February, 2014, the awarded compensation was deposited with the Registrar General of this Court and 80% of it has been already released to the claimants. Insurer is directed to deposit the compensation as per the modified award within a period of six weeks. Thereafter the compensation be released forthwith by the Registry to the claimants as per the modified award. After the Insurer has deposited the impugned compensation as per this judgment, the statutory deposit, if any, be refunded as per rules.

(SUNIL GAUR)
JUDGE

FEBRUARY 07, 2018
mamta