

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

Date of Decision: July 16, 2018

+ MAC.APP. 167/2013

NEW INDIA ASSURANCE CO. LTD. Appellant

Through: Mr. Sameer Nandwani, Advocate

Versus

VICHITRA GUPTA & ORS. Respondents

Through: Mr. Sanjay Kumar Jha, Advocate
for respondents No.1 to 4-Claimants

Mr. Pankaj Gupta, Advocate for Ms.Suman
Bagga, Advocate for respondent No.7-Bajaj
Allianze

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 9th November, 2012 grants compensation of ₹7,50,900/- with interest @ 7.5% p.a. to respondents-claimants on account of death of one *Amit Mohan* in a vehicular accident on 26th April, 2008.
2. The factual background of this case, as noticed in the impugned Award, is as under:-

“The brief facts, as stated by petitioners, are that on 26.04.2008, Sh. Amit Mohan was going on a motorcycle (TVS) no. DL-7ASN-4161 and his brother-in-law Sh. Prashant Kumar was sitting as pillion rider on motorcycle

and when they reached near Bhanpur Tiraha at National Highway, Gajraula, J.P.Nagar, one Dumper (Tipper) no. UP-80-AM-9121 driven rashly and negligently by respondent no.3 came from back side and hit the motorcycle. Sh. Amit Mohan and Prashant Kumar fell down and suffered injuries and were taken to Govt. hospital at Gajraula but Sh. Amit Mohan died on the way to the hospital and Sh. Prashant Kumar was referred to Moradabad.”

3. On the basis of evidence led, impugned Award has been rendered by Motor Accident Claims Tribunal (*henceforth referred to as “the Tribunal”*) and the breakup of compensation awarded is as under:-

1.) Loss of dependency	:	₹7,10,892/-
2.) Love & affection	:	₹25,000/-
3.) Loss of estate	:	₹10,000/-
4.) Funeral expenses	:	₹5,000/-
Total :		₹7,50,892/-
		(rounded off to Rs. 7,50,900/-)

4. The challenge to impugned Award by learned counsel for appellant-Insurer is on the ground that addition of 30% towards “*future prospects*” has been erroneously made by the Tribunal and relies upon Supreme Court’s decision in *Sarla Verma v. DTC*, (2009) 6 SCC 121 to submit that since the deceased was having fixed income, therefore, the Tribunal should have taken into consideration the actual income at the time of death. Learned counsel for Insurer further submits that compensation granted under the “*non-pecuniary heads*” ought to be suitably reduced in light of Constitution Bench decision of Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680.

5. On the contrary, learned counsel for Claimants submits that in view of *Supreme Court's* decision in *Pranay Sethi (Supra)*, the applicable multiplier is of 18 and addition towards "*future prospects*" has to be 40% and thus, the compensation awarded deserves to be modified.

6. Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that Supreme Court in *Reshma Kumari & Ors. v. Madan Mohan & Anr.*, (2013) 9 SCC 65 has reiterated that it is the obligation of the Court to ensure that the compensation granted is just, fair and proper. Supreme Court in *Anita and Others v. Arun Yadav and Others* 2017 SCC OnLine SC 1139 has in a case, where the deceased was drawing minimum wages, made addition towards "*future prospects*" and so, in the instant case, the addition towards "*future prospects*" has to be 40% and after deducting 50% towards "*personal expenses*" of deceased, the "*loss of dependency*" is recalculated as under:-

$$₹6,510/- \times 12 \times 140/100 \times 18 \times 50/100 = ₹9,84,312/-$$

7. As regards compensation granted under the '*non pecuniary heads*', it needs to be brought in tune with Supreme Court's Constitution Bench decision in *Pranay Sethi (supra)*. Accordingly, compensation granted by the Tribunal under the head of '*love & affection*' is disallowed. However, "*funeral expenses*" are increased from ₹5,000/- to ₹15,000/-. Similarly, compensation granted under the head "*loss of estate*" is also increased from ₹10,000/- to ₹15,000/-.

8. In light of the aforesaid, the compensation payable to respondents-claimants is reassessed as under:-

1) Loss of dependency	:	₹9,84,312/-
2) Loss of estate	:	₹15,000/-
3) Funeral expenses	:	₹15,000/-
Total	:	<u>₹10,14,312/-</u>
Less interim compensation paid		<u>₹50,000/-</u>
		₹9,64,312/-

9. In the light of aforesaid, total compensation payable to appellants is enhanced from ₹7,50,900/- ₹10,14,312/-. A Three Judge Bench of Supreme Court in a recent decision of *Jagdish v. Mohan and Others*, (2018) 4 SCC 571 has granted interest @ 9% *per annum* on the awarded compensation and so, claimants are also entitled to interest @ 9% *per annum*. The enhanced compensation be deposited with the Registrar General of this Court within four weeks by Insurer and it be disbursed in the ratio and manner, as indicated in the impugned Award.

10. With aforesaid directions, this appeal is disposed of.

(SUNIL GAUR)
JUDGE

JULY 16, 2018

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