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

Date of Judgment: August 20, 2018

\+ **MAC.APP. 173/2013**

THE NEW INDIA ASSURANCE CO. LTD.

..... Appellant

Through: Mr. Pankaj Seth, Advocate

Versus

FAKIR CHAND PAL & ORS. ..... Respondents

Through: Mr. Aditya Sharda, Advocate

\+ **MAC.APP. 300/2013**

FAKIR CHAND PAL & ANR.

..... Appellant

Through: Nemo

Versus

RAJINDER SINGH & ORS. .....Respondents

Through: Mr. Pankaj Seth and Mr. Aditya, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned two appeals are directed against Award of 26th November, 2012 vide which compensation of ₹6,04,320/- with interest @ 7.5% per annum has been awarded to Claimants. In the above captioned first appeal, the Insurer seeks exoneration on the ground of lack of negligence on the part of driver of Insured vehicle and 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 Award of 26th November, 2012, 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:-

> *"Briefly stating the facts, as stated by the petitioner, are that on 22.05.2008 Sh. Pawan Kumar (the deceased) and Sh. Fakir Chand Pal/ petitioner No. 1, were returning to their home form their place of work i.e. National Defence College (Ministry of Defence) and Sh. Pawan Kumar was travelling in the bus bearing No. DL-1PA-2694 (Blue Line), driven by the respondent No. 1 rashly and negligently and when Sh. Pawan Kumar was deboarding, he fell down on road and came under rear wheel of the offending bus because of the rash and negligent driving of respondent No. 1. Sh. Pawan Kumar suffered serious injuries and was taken to Guru Teg Bahadur Hospital, Shahdra, Delhi, where Sh. Pawan Kumar was treated and after some time doctor declared him dead. It is stated that driver/respondent No. 1 was caught by the constable. It is also stated that Sh. Pawan Kumar was having diploma in automobile and was working as a motor mechanic cum driver in National Defence college (Ministry of Defence), Delhi, and was earning near about 10,000/- per month. It is stated that deceased was looking after the entire family and was having one*

unmarried sister and younger brother and was helping his old aged parents and was giving Rs. 8000/- per month to the petitioner No. 1 & 2"

2. The Motor Accident Claims Tribunal (hereinafter referred to as 'the Tribunal') has relied upon the evidence of parents of *Pawan* who had died in a vehicular accident on 22nd May, 2008. The Tribunal has also relied upon the evidence of parents of deceased and the other evidence on record to award the compensation as referred to above. *Pawan* was aged 30 years on the day of this vehicular accident and as per the evidence of deceased's father *(PW-1)*, deceased was working as temporary private employee and was earning ₹4,100/- per month. It is matter of record that the aforesaid evidence remains unchallenged. The Tribunal has calculated the loss of dependency by adding 30% towards future prospects and since deceased was married and so one-third 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 ₹5,54,320/-. Compensation of ₹25,000/- has been awarded under the head of *'Loss of love and affection'* and '*Funeral Expenses*' of ₹5,000/- 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.5,54,320 /-*
2)	*Loss of Love and Affection*	=	*Rs.25,000/-*
3)	*Funeral Expenses*	=	*Rs.5,000/-*
4)	*Loss of Estate*	=	*Rs.10,000/-*
5)	*Loss of Consortium*	=	*Rs.10,000/-*
	Total	=	*Rs.6,04,320 /-*

3. The challenge to impugned Award by learned counsel for The New India Assurance Co. Ltd. *(hereinafter referred to as-Insurer)* is on the ground that negligence on the part of driver of insured vehicle does not stand proved. It is pointed out that there is no documentary evidence on record regarding income of the deceased and no addition towards future prospects ought to have been made. It is submitted by Insurer's counsel that deduction of personal expenses of deceased ought to have been 50% as the widow of deceased had remarried after about one year of the accident and that in view of Supreme Court's Constitution Bench decision in *National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680, no compensation under the head of *'love and affection'* is to be granted. So, modification of the impugned Award is sought.

4. On the contrary, learned counsel for the widow of the deceased refutes the aforesaid stand taken on behalf of Insurer and supports the impugned Award. However, there is no Representation on behalf of the *Claimants* despite being intimated about the pendency of this appeal.

5. Upon hearing and on perusal of impugned award, evidence on record and the Supreme Court's Constitution Bench decision in *Pranay Sethi* (*supra*), I find that deceased with his father was travelling in the Insured Bus when this accident had taken place. The father *(PW-1)* of the deceased is an eye-witness of this accident. I have scrutinized the evidence of father-*Fakir Chand (PW-1)* and I find there is nothing worthwhile in his cross-examination to demolish his version regarding the manner of taking place of this accident. This witness has clearly stated that the accident in question

had taken place due to rash and negligent driving by driver of the Insured Bus. So, the Insurer cannot be absolved of the liability to pay the compensation. The Tribunal has rightly taken income of the deceased at ₹4,100/- per month in face of evidence of *Bhim Rao (PW-5)* who has clearly stated in his evidence that the deceased was drawing salary of ₹4,100/- per month and his evidence remains unchallenged. While taking the income of deceased at ₹4,100/- per month, addition towards *"future prospects"* has to be 40% in view of Supreme Court's decision in *Pranay Sethi (Supra)*. The Tribunal has erred in making addition of 30% towards *"future prospects"*. Such a course is adopted though counsel for the claimants has not come forward to seek enhancement of compensation, as it is the solemn duty of this Court to award just and fair compensation. Deduction of 50% towards *"personal expenses"* sought by the Insurer's counsel is not justified as the widow of the deceased had remarried after about one year. The Tribunal has rightly made deduction of one-third towards *"personal expenses"*. The Tribunal has erred in adopting the multiplier of 13 while taking into consideration the age of the claimants. In light of Supreme Court's decision in *Pranay Sethi* (*supra*), and the facts of the instant case, multiplier of 17 is applied as per the age of deceased. In view of above the *"loss of dependency"* is reassessed as under:

₹4,100 X 12 X 140/100 X 17 X 2/3 = ₹7,80,640/-

6. The compensation granted by Tribunal under the non-pecuniary heads needs to be brought in tune with the decision in *Pranay Sethi (supra)* and so, the compensation of ₹25,000/- granted by the Tribunal under the head of '*Loss of Love and Affection*' is disallowed. However, the compensation

granted under the head of *"loss of estate"* is increased from ₹10,000/- to ₹15,000/- and *"funeral expenses"* are also increased from ₹5,000/- to ₹15,000/-. Accordingly, the compensation payable to the *Claimants* is re-assessed as under:-

1. Loss of dependency:	*₹7,80,640/-*
2. Loss of estate	*₹15,000/-*
3. Funeral Expenses	*₹15,000/-*
4. Loss of Consortium	*₹10,000/-*
Total compensation:	₹8,20,640/-

7. In light of the aforesaid, compensation of ₹6,04,320/- granted by the Tribunal, is enhanced to ₹8,20,640/-. 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*. 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 this judgment but in the same ratio and manner as indicated by the Tribunal in the impugned Award.

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

(SUNIL GAUR)
JUDGE

AUGUST 20, 2018
s/v