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

Date of Decision: September 25, 2018

\+ **MAC.APP. 159/2018**
\+ **MAC.APP. 160/2018**
\+ **MAC.APP. 161/2018**

NATIONAL INSURANCE CO LTD .....Appellant
Through: Ms. Shantha Devi Raman and Mr. Arihant Jain, Advocates

versus

MANOJ KUMAR & ORS.

MANOJ KUMAR & ANR. .....Respondents
Through: Mr. Jitender Kamra, Advocate

\+ **MAC.APP. 859/2018**

MANOJ KUMAR & ORS. .....Appellant
Through: Mr. Jitender Kamra, Advocate

versus

JAGDISH PARIHAR & ANR. (NATIONAL INSURANCE CO LTD) .....Respondents
Through: Ms. Shantha Devi Raman and Mr. Arihant Jain, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned four appeals arise out of impugned Award of 7th October, 2017, vide which the Motor Accident Claims Tribunal *(henceforth referred to as "the Tribunal")* has awarded compensation of

₹51,72,000/-*(rounded of)* with interest @ 9% p.a. to legal heirs of *Surendra,* Head Constable in Delhi Police, aged 45½ years who had died in a vehicular accident which took place on 30th April, 2013.

2. In this unfortunate accident in question, a Housewife- *Nirmala*, w/o Surendra, aged 40 years and 3 months had also suffered fatal injuries and the Tribunal vide common impugned Award of 7th October, 2017, has granted compensation of ₹15,30,000/- *(rounded of)* with interest @ 9% p.a. to her legal heirs, which is under challenge in the above appeals. A student-*Manoj*, son of deceased -*Surendra and Nirmala* was also injured in this accident and the Tribunal has granted compensation of ₹30,000/- *(rounded of)* with interest @ 9% p.a. to him.

3. In the above captioned appeals, National Insurance Company Limited *(henceforth referred to as the 'Insurer')* disputes the involvement of the insured tempo in the accident in question and seeks exoneration from paying the awarded compensation, whereas legal heirs of deceased-*Nirmala* seek enhancement in the compensation awarded by the Tribunal.

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

5. The factual background of this case, as noticed in the impugned Award, is as under:-

> *"Brief facts of the vehicular accident as averred in the Claim Petitions and DAR are that on 30.04.2013 at about 04.15 am at Rohtak-Delhi Road before the red light at Ghevra Mor, Mundka, deceased Sh. Surendra Singh @ Surender Singh was driving the Ritz Car No. DL-5C-J-*

0528 in which his wife Smt. Nirmala Devi and son Sh. Manoj Kumar were also travelling, when the car was hit by the speeding offending vehicle, while overtaking. Consequently, Sh. Surendra Singh @ Surender Singh and his wife Smt. Nirmala Devi suffered fatal injuries and Sh. Manoj Kumar suffered injuries. Allegedly, the offending vehicle was driven in a rash and negligent manner by Sh. Jagdish Parihar (Respondent No. 1), who is also the owner of the vehicle, which was insured with National Insurance Company Limited (Respondent No. 2)"

6. To render the impugned Award, the Tribunal has relied upon evidence of Injured-*Manoj*, who has also deposed on behalf of legal heirs of deceased and other evidence on record. The breakup of compensation awarded by the Tribunal to legal heirs of deceased-*Surendra* is as under:-

1	Loss of Financial Dependency	₹49,21,420/-
2	Loss of Love & Affection	₹1,50,000/-
3	Funeral Expenses	₹50,000/-
4	Loss of Estate	₹50,000/-
	Total	**₹51,71,420/-** *(rounded off to ₹51,72,000/-)*

7. The breakup of compensation awarded by the Tribunal to legal heirs of deceased –*Nirmala* is as under:-

1	Loss of dependency on account of gratuitous services	₹12,79,200/-
2	Loss of Love & Affection	₹1,50,000/-
3	Funeral Expenses	₹50,000/-
4	Loss of Estate	₹50,000/-
	Total	**₹15,29,200/- *(rounded off to ₹15,30,000/-)***

8. The breakup of compensation awarded by the Tribunal to Injured-*Manoj* is as under:-

1.	Expenses relating to medicines	₹14,755/-
2.	Pain, Sufferings & Trauma	₹15,000/-
	Total	₹29,755/- *(rounded off to ₹30,000/-*

9. The challenge to impugned Award by counsel for Insurer is on the ground that insured tempo was not involved in the accident in question. It is submitted that salary of the deceased- *Surendra* has been assessed without deducting the income tax, transport allowance, washing allowance, etc.. It is submitted that the '*non-pecuniary damages*' granted to the legal heirs of the deceased are required to be brought in tune with Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680. It is further submitted by Insurer's counsel that deceased-*Nirmala's* notional income has been erroneously assessed by the Tribunal on minimum wages payable to non-matriculate and addition of 25% towards '*future prospects*' made by the Tribunal is unjustified and compensation granted under the '*non-pecuniary damages*' to her legal heirs is on the higher side.

10. On the contrary, learned counsel for the legal heirs of both the deceased and the injured refutes the aforesaid stand taken on behalf of Insurer and submits that the quantum of compensation granted to legal heirs of deceased-*Nirmala* is inadequate. Enhancement of compensation is sought on the ground that in view of Supreme Court's decision in

Pranay Sethi (Supra), addition of 40% towards *'future prospects'* has to be made.

11. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited**,** I find that registration number of the insured tempo in question does not find mention in the PCR form and the FIR of this case, but in the charge-sheet filed in the criminal case, details of the insured vehicle are mentioned.

12. During the course of hearing, learned counsel for Insurer had drawn the attention of this Court to evidence of Investigating Officer, charge-sheet filed in the criminal case and evidence of Injured-*Manoj* to assert that the insured vehicle was not involved in this accident. On scrutiny of the evidence of Injured-*Manoj*, I find that there is no basis to conclude that the insured vehicle was not involved in this accident. It is so said, because there is no cross-examination of Injured-*Manoj* as to how and when he came to know about the particulars of the insured vehicle. In any case, the level of scrutiny in cases like instant one and the criminal case cannot be equated. Although driver of the insured vehicle has deposed that he was not driving the insured vehicle negligently and has tried to impute the negligence on the car driver who had died in this accident, but I find that the evidence of Injured-*Manoj* as compared to the evidence of the driver of the insured vehicle is worthy of reliance. Although there was no fresh damage to the insured vehicle, but mechanical inspection of insured vehicle was done after few months of this accident and so, on this ground, it cannot be said that insured vehicle was not involved in the accident in question.

13. Pertinently, the Detail Accident Report (DAR) gives the particulars of the insured vehicle and the name of its driver. Upon taking an overall view of the entire evidence on record, I find that there is no basis to discard the evidence of Injured-*Manoj,* who had witnessed this accident. So far as salary of deceased- *Surendra* is concerned, I find that the Tribunal has assessed the income of deceased- *Surendra* on the basis of the Income Tax Returns filed and so, there is no basis to take a different view then the one taken by the Tribunal on this aspect.

14. Compensation granted by the Tribunal under the *'non pecuniary heads'* to legal heirs of deceased- *Surendra* needs to be brought in tune with Supreme Court's decision in *Pranay Sethi (Supra)*. Accordingly, compensation of ₹1,50,000/- granted under the head of *'loss of love and affection'* is disallowed and the *'funeral expenses'* and compensation under the head of *'loss of estate'* are reduced from ₹50,000/- each to ₹15,000/- each.

15. The compensation payable to legal heirs of deceased- *Surendra* is re-assessed as under:-

1	Loss of income	₹49,21,420/-
2	Loss of estate	₹15,000/-
4	Funeral expenses	₹15,000/-
	Total	₹49,51,420/-

16. The compensation granted by the Tribunal to legal heirs of deceased-*Nirmala* is on the basis on minimum wages payable to non matriculate. In view of Supreme Court's decision in *Jitendra Khimshankar Trivedi & Ors. vs. Kasam Daud Kumbhar & Ors.* (2015) 4 SCC 237, the compensation payable to housewife has to be assessed on

notional income of ₹3,000/- per month. Since deceased-*Nirmala* was aged few months more than 40 years on the day of the accident therefore, in view of Supreme Court's *Pranay Sethi (Supra)*, addition of 25% towards *'future prospects'* has to be made. The Tribunal has rightly deducted one-third towards *'personal expenses'* of the deceased but has erred in applying multiplier of 15 as deceased *Nirmala* was aged more than 40 years. In view of Supreme Court's decision in *Sarla Verma (Smt.) & Ors. vs. Transport Corporation & Anr.* (2009) 6 SCC 121, the applicable multiplier is of 14. Accordingly, in case of deceased- *Nirmala*, the *"loss of dependency"* is re-assessed as under:-

₹3,000/- per month X 12 X 125/100 X 2/3 X 14= ₹4,20,000/-

17. In the considered opinion of this Court, no case for enhancement of compensation to legal heirs of deceased-*Nirmala* is made out. In view of Supreme Court's decision in *Pranay Sethi (Supra)* the compensation of ₹1,50,000/- under the head of *'loss of love and affection'* granted to legal heirs of deceased-*Nirmala* is disallowed and the *'funeral expenses'* as well as compensation under the head of *'loss of estate'* is reduced from ₹50,000/- each to ₹15,000/- each. Accordingly, the compensation payable to legal heirs of deceased-*Nirmala* is re-assessed as under:-

1	Loss of dependency on account of gratuitous services	₹4,20,000/-
2	Funeral expenses	₹15,000/-
4	Loss of Estate	₹15,000/-
	Total	**₹4,50,000/-**

18. The compensation awarded to Injured-*Manoj* is found to be just

and reasonable and no case for its reduction is made out.

19. Consequentially, the compensation of ₹51,72,000/-*(rounded of)* awarded by the Tribunal to legal heirs of deceased- *Surendra* is reduced to ₹49,51,420/-. In case of deceased-*Nirmala,* the compensation payable legal heirs of deceased-*Nirmala* stands reduced from ₹15,30,000/- *(rounded of)* to ₹4,50,000/-. The modified compensation shall carry interest @ 9% *per annum* and it be released forthwith to the legal heirs of deceased- *Surendra* and deceased-*Nirmala* and Injured-*Manoj* in the manner, as indicated in the impugned Award. Statutory deposit alongwith excess deposit, be refunded to the Insurer.

20. With aforesaid modification in the impugned Award, the above captioned four appeals are accordingly disposed of.

(SUNIL GAUR)
JUDGE

SEPTEMBER 25, 2018
v