

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
*Date of Decision: August 02, 2018*  
+ **MAC.APP. 167/2018**

DINESH PRASAD & ANR. ....Appellants  
Through: Mr. Vijay Singh Ahlawat,  
Advocate

Versus

RAJ PAL & ORS (THE NEW INDIA ASSURANCE CO LTD,  
UNITED INDIA INSURANCE CO LTD ) .....Respondents  
Through: Mr. Sanjay Dewan, Advocate for  
respondent No. 2  
Mr. D.K. Sharma, Advocate for respondent No.  
3  
Mr. Mirza Amir Baig, Advocate for  
Mr. Sarfaraz Khan, Advocate for respondents  
No. 4 and 5  
Mr. Amit Kumar Singh, Advocate for  
respondent No. 6

**CORAM:**  
**HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT**  
**(ORAL)**

1. Impugned Award of 7<sup>th</sup> October, 2017 grants compensation of ₹6,79,388/- with interest @ 9% p.a. to respondents-*Claimants* on account of death of a student-*Chandan*, aged 20 years, in a vehicular accident which took place on 5<sup>th</sup> January, 2015.

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

*“Brief facts of the case giving rise to the claim Petition are that on 05.01.2015 the deceased after attending his*

*coaching classes boarded, alongwith his uncle Sintu, a bus bearing No. DL-1PD-0292 owned by the Respondent No. 2 and being driven by the Respondent No.1 and insured with the Respondent No. 3.*

*The deceased was standing on the rear footboard of the above mentioned bus even when the same was moving/plying on the road.*

*The said bus while trying to overtake another DTC bus bearing No. DL-1PC-9263 owned by the Respondent No. 5 and being driven by the Respondent No. 4 and insured with Respondent No. 6, took a sharp turn towards its right side and the deceased who was standing on the rear footboard lost balance and it is also claimed that at the very same time the Respondent No. 4 opened its window which struck against the deceased as a result of which the deceased fell on the road and sustained injuries.”*

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:-

|                                                                        |   |              |
|------------------------------------------------------------------------|---|--------------|
| Loss of financial dependency                                           | : | ₹9,58,776/-  |
| Loss of love and affection to parents of the deceased (₹1.50 Lac each) | : | ₹3,00,000/-  |
| Loss of Estate                                                         | : | ₹50,000/-    |
| Funeral Expenses                                                       | : | ₹50,000/-    |
| Total                                                                  | : | ₹13,58,776/- |
| Less:- 50% Contributory Negligence                                     | : | ₹6,79,388/-  |
| Total compensation awarded                                             | : | ₹6,79,388/-  |

4. In this appeal, enhancement of compensation is sought by appellants-*Claimants*, who are the parents of deceased. It is submitted by appellants’ counsel that the Tribunal has erred in not making any addition towards “*future prospects*”. It is submitted that the Tribunal has erroneously applied multiplier of 14, whereas the applicable multiplier is

of 18. Reliance is placed upon Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680 to submit that age of the deceased has to be considered while applying the multiplier. It is urged by appellants' counsel that the finding of contributory negligence returned by the Tribunal is not justified, as it is duty of the conductor to ensure that all passengers get inside the bus before the bus starts. So, it is submitted that the quantum of compensation granted by the Tribunal needs to be suitably enhanced.

5. On the contrary, learned counsel for respondent-*Insurers* support the impugned Award and submit that the compensation awarded is just and fair and this appeal deserves to be dismissed.

6. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that the deceased was certainly negligent in travelling on the footboard of the bus and so the plea of contributory negligence returned by the Tribunal is justified.

7. As regards application of multiplier is concerned, I find that in view of Supreme Court's decision in *Pranay Sethi (supra)*, the applicable multiplier would be of 18 and not 14, as applied by the Tribunal. Since income of deceased is assessed on minimum wages of a graduate, therefore, while applying the ratio of Supreme Court's decision in *Pranay Sethi (Supra)* to the facts of the instant case, it is deemed appropriate to make addition of 40% towards "*future prospects*" as the deceased was aged 20 years on the day of the accident.

8. The compensation granted under the "*non pecuniary heads*", 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 “*loss of love & affection*” is disallowed. Even “*funeral expenses*” are reduced from ₹50,000/- to ₹15,000/-. Similarly, compensation granted under the head “*loss of estate*” is also reduced from ₹50,000/- to ₹15,000/-. The compensation granted under the head of “*loss of dependency*” is reassessed as under:

$$₹11,414/- \times 12 \times 18 \times 50/100 \times 140/100 = ₹17,25,796/-$$

9. After deducting 50% towards Contributory Negligence of deceased, the compensation payable to appellants-*Claimants* is reassessed as under:-

| S.No. | Description        | Amount      |
|-------|--------------------|-------------|
| 1.    | Loss of Dependency | ₹8,62,898/- |
| 2.    | Funeral Expenses   | ₹15,000/-   |
| 3.    | Loss of Estate     | ₹15,000/-   |
|       | Total              | ₹8,92,898/- |

10. Consequentially, total compensation payable to appellants-*Claimants* is enhanced from ₹6,79,388/- to ₹8,92,898/-. Four weeks’ time is granted to Insurers to deposit the enhanced compensation with the Tribunal concerned. The re-assessed compensation shall carry interest @ 9% *per annum* and it be disbursed to appellants-*Claimants* in the ratio and manner, as indicated in the impugned Award.

11. While modifying the impugned order in aforesaid terms, this appeal is disposed of.

**(SUNIL GAUR)**  
**JUDGE**

**AUGUST 02, 2018**

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