

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

Date of Decision: July 18, 2018

+ MAC.APP. 242/2013

NATIONAL INSURANCE CO. LTD.Appellant

Through: Ms. Shantha Devi Raman &
Mr. Arihant Jain, Advocates

Versus

MAHENDRA SINGH & ORS.Respondents

Through: Mr. Pnkaj Singh Thakur, Advocate
for Mr. Navneet Goyal, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 13th December, 2012 grants compensation of ₹13,60,026/- with penal interest @ 12% p.a. to respondents-claimants on account of death of one *Anar Devi*, aged 46 years in a vehicular accident on 20th January, 2012.

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

“LEGAL REPRESENTATIVES (husband and children) of Smt. Anar Devi (since deceased) have claimed compensation to the tune of Rs.25,00,000/- with the averments that on 20/01/2012 at about 06:15 P.M. Smt. Anar Devi (since deceased) alongwith her colleague Smt. Usha Devi was coming to her house from her duty place (i.e. Jhilmil Industrial Area) on foot via Sunder Nagari. As alleged, when she reached near Bus Stand of Bus route no.280, Mata

Mandir, Sunder Nagari, Delhi, in the meanwhile a motorcycle bearing no. DL7SAX 8799 (Hero Honda Splendor- Black Colour), which was being driven by its driver/ respondent no.1 at a very high speed, rashly, negligently in a zag manner, without taking necessary precautions, without proper lookouts, violating the traffic rules and without any horn, came from back side and hit Smt. Anar Devi (since deceased) with great force. Consequently, Smt. Anar Devi fell down on the road and sustained grievous injuries all over body. She was immediately taken to GTB Hospital, Delhi by Smt. Usha Devi where she died during the course of her treatment and her postmortem was conducted at mortuary of GTB Hospital, Delhi. FIR No.26/2012 u/s. 279/337/304A IPC stands registered at P.S. Nand Nagri regarding this accident”

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	:	₹13,20,025.20/-
2.) Loss of Love and affection	:	₹ 25,000/-
3.) Funeral expenses	:	₹ 5,000/-
4.) Loss of Consortium	:	₹ 10,000/-

Total : ₹13,60,025.20/-
(rounded off to ₹13,60,026/-)

4. The challenge to impugned Award by learned counsel for appellant-Insurer is on the ground that the “*loss of dependency*” has been erroneously calculated by the Tribunal while taking the minimum wages payable to a matriculate and by giving increase of 15%. Reliance is placed upon Supreme Court’s decision in *Jitendra Khimshankar Trivedi & ors. Vs. Kasam Daud Kumbhar & ors.* (2015) 4 SCC 237 and *Laxmidhar Nayak & ors. Vs. Jugal Kishore Behera & ors.* (2018) 1 SCC

746 to submit that in case of a housewife, notional income of ₹3,000/- p.m. is to be taken and no increase or addition is to be made. Counsel for appellant-Insurer further submits that the Tribunal has erred in not deducting 1/3rd towards “*personal expenses*” and so, “*loss of dependency*” needs to be recalculated.

5. On the contrary, learned counsel for respondent-Claimants supports the impugned Award and submits that the compensation awarded is just and fair. So, it is submitted by learned counsel for respondents that this appeal deserves to be dismissed.

6. Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that Supreme Court in *Jitendra Khimshankar Trivedi (supra)* and *Laxmidhar Nayak (supra)*, has declared in no uncertain terms that in a case of housewife, notional income of ₹3,000/- p.m. is to be taken and no addition or increase towards “*future prospects*” is to be made. Since there are four dependants, the deduction of 1/4th ought to be made towards “*personal expenses*”. In the light of aforesaid, “*loss of dependency*” is reassessed as under:-

$$\text{₹3,000/- p.m.} \times 12 \times 13 \times 3/4 = \text{₹3,51,000/-}$$

7. As regards compensation granted under the ‘*non pecuniary heads*’, it needs to be brought in tune with Constitution Bench decision of Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680. Accordingly, compensation granted by the Tribunal under the head of ‘*loss of love & affection*’ is disallowed. However, “*funeral expenses*” are increased from ₹5,000/- to ₹15,000/- and Claimants are granted compensation of ₹15,000/- under the head “*loss of estate*”. Compensation granted under the head “*loss of*

consortium” is also increased from ₹10,000/- to ₹40,000/-.

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

S.No.	Description	Amount
1.	Loss of Dependency	₹3,51,000/-
2.	Loss of Consortium	₹40,000/-
3.	Funeral Expenses	₹15,000/-
4.	Loss of Estate	₹15,000/-
	Total	₹4,21,000/-

In the light of aforesaid, total compensation payable to appellants is reduced from ₹13,60,026/- to ₹4,21,000/-. As far as interest granted by the Tribunal is concerned, 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, in the instant case, it is directed that the modified compensation shall carry interest @ 9% *per annum*. Compensation awarded be released forthwith to respondents-Claimants in the manner and ratio as indicated in the impugned Award. Statutory deposit alongwith excess deposit, be refunded to appellant-Insurer.

(SUNIL GAUR)
JUDGE

JULY 18, 2018

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