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

Date of Decision: August 07, 2018

\+ **MAC.APP. 219/2016 & CMs 8544/16, 17399/16**
\+ **MAC.APP. 220/2016 & CMs 8547/16, 17403-04/16, 13757/17**
\+ **MAC.APP. 221/2016 & CMs 8550/16, 17406-07/16, 13756/17**

THE NEW INDIA ASSURANCE CO LTD ..... Appellant
Through: Mr. J.P.N. Shahi and Ms. Komal Dhingra, Advocates

versus

KAMLESH AGGARWAL & ORS
KAMLESH AGGARWAL & ORS
ARJUN AGGARWAL & ORS .....Respondents
Through: Mr. Bhupesh Narula and Mr. Yogesh Narula, Advocates for respondents-Claimants

\+ **MAC.APP. 252/2016**
\+ **MAC.APP. 253/2016**
\+ **MAC.APP. 254/2016**

ARJUN AGGARWAL
KAMLESH AGGARWAL & ANR.
KAMLESH AGGARWAL ..... Appellants
Through: Mr. Bhupesh Narula and Mr. Yogesh Narula, Advocates

versus

VIJAY & ORS (THE NEW INDIA ASSURANCE CO LTD) .....Respondents
Through: Mr. J.P.N. Shahi and Ms. Komal Dhingra, Advocates for Insurer

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned six appeals arise out of one vehicular accident. Vide impugned Award of 22nd December, 2015, the Motor Accident Claims Tribunal, North-West District, Rohini Courts, Delhi *(henceforth referred to as "the Tribunal")* has awarded compensation of ₹34,15,940/- with interest @ 9% p.a. to Claimants on account of death of a student-*Neetu,* aged 20 years, in a vehicular accident which took place on 29th January, 2009. In this accident, parents of deceased-*Neetu,* i.e. *Arjun* and *Kamlesh*, were also injured and the Tribunal vide separate Awards of even date i.e. 6th January, 2016 has granted compensation of ₹18,67,852/- and ₹12,99,646/- with interest @ 9% *per annum* respectively.

2. The above-captioned first three appeals are by Insurer to seek reduction in the quantum of compensation granted by the Tribunal to Claimants/Injured persons, whereas the remaining three appeals are by Claimants/Injured persons to seek enhancement in the quantum of compensation granted by the Tribunal. Pertinently, MAC.APPs. 220/2016 and 254/2016 are the cross-appeals pertaining to Injured-*Kamlesh* and MAC.APPs. 221/2016 and 252/2016 are the cross-appeals pertaining to Injured-*Arjun*.

3. Since these six 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.

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

> *"Brief facts of the case as revealed from the petition are that on 29.01.2009, both the petitioners alongwith their daughter Ms. Neetu Aggarwal (hereinafter referred to as the "deceased") and their son were going to Panchkula, Haryana in their car bearing registration No. DL-4C-AG-3978, which at the relevant time was driven by their driver namely Sh. Rampreet. Further, when at about 3:30-4:00 pm, when they reached at GTK Road near Kumaspur Mor, Omax City, PS Murthal, Sonipat, Haryana, suddenly an Innova car bearing registration No. CH-02-2408 (hereinafter referred to as the "offending vehicle") which at the relevant time was driven by Sh. Vijay/RI in a rash and negligent manner came from the opposite side at high speed which hit the car of petitioners wherein the deceased was also traveling due to which the accident occurred wherein both the petitioners, their daughter i.e. the deceased and their driver Sh. Rampreet sustained injuries. They were initially admitted in General Civil Hospital, Sonipat by the officials of traffic mobile van which arrived at the spot soon after the accident, however, on the way to hospital, the driver of their car succumbed to his injuries and expired. Thereafter, the petitioners and the deceased also took treatment from Maharaja Agrasen Hospital, Delhi, however the deceased succumbed to her injuries during the course of her treatment on 31.01.2009 and expired."*

5. While relying upon the evidence of Claimants/Injured and the evidence produced by Insurer, impugned Awards have been rendered.

The break-up of compensation granted by the Tribunal to legal heirs of late *Neetu* is as under: -

Sl. No.	**Compensation under various heads**	**Amount awarded**
1	Loss of dependency	₹31,50,000/-
2	Loss of love & affection	₹1,00,000/-
3	Funeral expenses	₹25,000/-
4	Loss of estate	₹1,00,000/-
5	Medical Bills	₹40,940/-
	Total	**₹34,15,940/-**

6. The Tribunal has assessed the *'loss of dependency'* while relying upon the *'appointment letter' (Ex.PW-5/1)* issued to late *Neetu*, which discloses that the salary offered to her was ₹3.50 lacs *per annum*. After deducting one-half towards *'personal expenses'*, *'loss of dependency'* has been assessed by the Tribunal.

7. In case of Injured-*Kamlesh*, the break-up of compensation awarded by the Tribunal is as under: -

Sl. No.	**Compensation under various heads**	**Amount awarded**
1.	Loss of Income	₹1,47,288/-
2.	Loss of future earning capacity	₹7,46,740/-
3.	Pain and suffering	₹50,000/-
4.	Loss of enjoyment of amenities of life	₹50,000/-
5.	Conveyance and special diet	₹25,000/-
6.	Medical expenses	₹2,30,618/-
7.	Attendant charges	₹50,000/-
	Total	**₹12,99,646/-**

8. To assess the income of Injured-*Kamlesh*, the Tribunal has relied upon the Income Tax Returns *(Ex.PW-1/A)*. After adding 30% towards *'future prospects'*, the *'loss of earning capacity'* has been determined by the Tribunal.

9. In case of Injured-*Arjun*, the break-up of compensation awarded by the Tribunal is as under: -

Sl. No.	**Compensation under various heads**	**Amount awarded**
1.	Loss of Income	₹1,99,134/-
2.	Loss of future earning capacity	₹11,21,718/-
3.	Pain and suffering	₹50,000/-
4.	Loss of enjoyment of amenities of life	₹70,000/-
5.	Conveyance and special diet	₹40,000/-
6.	Medical expenses	₹3,17,000/-
7.	Attendant charges	₹70,000/-
	Total	**₹18,67,852/-**

10. On the basis of Income Tax Returns filed, income of Injured-*Arjun* has been assessed by the Tribunal after making addition of 30% towards *'future prospects'*.

11. Learned counsel for Insurer assails the impugned Awards on the ground that deceased-*Neetu* was a student and the Tribunal has erred in assessing her income while relying solely upon her *'appointment letter'* although she had not joined the job before her death. It is pointed out by Insurer's counsel that deceased-*Neetu* was a student of B.A. (Economics Hons.) and so, her income ought to have been assessed on minimum

wages payable to a matriculate. It is further submitted by Insurer's counsel that in view of Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.,* (2017) 16 SCC 680, compensation granted by the Tribunal to legal heirs of deceased-*Neetu* under *'non-pecuniary heads'* deserves to be reduced.

12. Regarding Injured-*Arjun*, it is submitted by Insurer's counsel that the disability suffered by him as per the Disability Certificate *(Ex.PW-1/2)*, was 54% in relation to both upper limbs and right lower limb, but the Tribunal has erred in assessing the functional disability at 50% instead of 25%. It is pointed out that in view of Supreme Court's Constitution Bench decision in *Pranay Sethi (supra)*, addition towards *'future prospects'* ought to be 15%. Regarding compensation granted by the Tribunal under the *'non-pecuniary heads'*, it is pointed out by Insurer's counsel that it is exorbitant and it needs to be appropriately reduced.

13. Regarding Injured-*Kamlesh*, it is submitted by Insurer's counsel that as per Disability *Certificate (Ex. PW-6/A)* she had suffered permanent disability of 40% in relation to right lower limb and the Tribunal has erred in taking the functional disability to be 30% instead of 20%. It is pointed out that the Tribunal has erred in making addition of 30% towards *'future prospects'* whereas the addition ought to be 15% in view of Supreme Court's Constitution Bench decision in *Pranay Sethi (supra)*. It is also submitted by Insurer's counsel that the quantum of compensation under the *'non-pecuniary heads'* is on the higher side and it needs to be accordingly reduced.

14. On the contrary, learned counsel for *Claimants/Injured* persons submits that the compensation granted by the Tribunal is inadequate and it needs to be substantially enhanced. It is pointed out that the Tribunal has erred in not making addition of 50% towards *'future prospects'* while determining the income of deceased-*Neetu.* In case of Injured-*Arjun* and *Kamlesh*, it is submitted that the compensation granted by the Tribunal under the *'non-pecuniary heads'* is meager and it needs to be suitably enhanced as Injured-*Arjun* had remained under treatment for 1½ years and Injured-*Kamlesh* had remained under treatment for one year.

15. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that the Tribunal has rightly assessed the income of deceased-*Neetu* while relying upon her *'appointment letter'*. As regards compensation granted by the Tribunal to the legal heirs of deceased-*Neetu* under the *'loss of future earning capacity'* is concerned, I find that the Tribunal has erred in not making any addition towards *'future prospects'* in her case. It is so said in light of Supreme Court's Constitution Bench decision in *Pranay Sethi (Supra).* Deceased-*Neetu* was aged 20 years on the day of the accident and as per *'appointment letter' (Ex.PW-5/1)*, her employment was of permanent nature and so, addition of 50% towards *'future prospects'* is made. The Tribunal has erred in taking the notional salary of deceased-*Neetu* on the basis of her *'appointment letter'* at ₹3.50 lacs *per annum* without deducting tax. Supreme Court in *Pranay Sethi (Supra)* has reiterated that where the annual income is in the taxable range, the word *"actual salary"* should be read as *"actual salary less tax"*. As such, after

deducting the tax payable, the *'loss of dependency'* is reassessed as under:-

₹3,28,000/- p.a. X 150/100 X 18 X 50/100 = ₹44,28,000/-

16. So far as the compensation granted by the Tribunal to the legal heirs of deceased-*Neetu* under *'non-pecuniary heads'* is concerned, in view of Supreme Court's Constitution Bench decision in *Pranay Sethi (supra)*, compensation granted by the Tribunal under the head of *'loss of love & affection'* is disallowed. The compensation granted under the head of *'loss of estate'* is reduced from ₹1,00,000/- to ₹15,000/- and the *"funeral expenses"* are reduced from ₹25,000/- to ₹15,000/-. *'Medical bills'* granted by the Tribunal to legal heirs of deceased-*Neetu* is justified and is accordingly maintained. Accordingly, compensation payable to legal heirs of deceased-*Neetu* is reassessed as under: -

Sl. No.	**Compensation under various heads**	**Amount awarded**
1	Loss of dependency	₹44,28,000/-
3	Funeral expenses	₹15,000/-
4	Loss of estate	₹15,000/-
5	Medical Bills	₹40,940/-
	Total	**₹44,98,940/-**

17. In case of Injured-*Arjun*, the Disability Certificate *(Ex.PW-1/2)* reflects that the disability suffered by him is 54% in relation to both upper limbs and right lower limb and the Tribunal has taken the functional disability at 50%. Dr. Arun Yadav *(PW-7)*, who has proved the Disability Certificate of Injured-*Arjun,* has categorically stated in his cross-examination that he had followed the *Guidelines framed under the*

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, to assess the disability. There is no cross-examination of *Dr. Arun Yadav (PW-7)* on the aspect of functional disability. However, I find that Injured-*Arjun* in his evidence on the functional disability aspect has not said much and there is nothing in his cross-examination on this aspect. In the face of the Disability Certificate *(Ex.PW-1/2)*, it can be reasonably concluded that the functional disability suffered by Injured-*Arjun* is 30%. Injured-*Arjun* was a shop-keeper and wholesaler of rice and edible-oil. His income has been rightly assessed on the basis of Income Tax Returns filed by him. The Tribunal has added 30% towards *'future prospects'* of Injured-*Arjun,* who was aged 49 years on the day of the accident, which cannot be sustained in view of Supreme Court's Constitution Bench decision in *Pranay Sethi (Supra).* In the facts of this case, it is deemed proper to make addition of 25% towards *'future prospects'*. Accordingly, in case of Injured-*Arjun,* the *'loss of future earning capacity'* is reassessed as under: -

₹11,063/-p.m. X12X 125/100 X 13 X 30/100= ₹6,47,185/-

18. The compensation of ₹50,000/- granted to Injured-*Arjun,* by the Tribunal under the head of *'pain and suffering'* is on lower side. Injured-*Arjun* had remained under treatment for a period of 1 ½ years and so, the compensation under this head is enhanced from ₹50,000/- to ₹1,00,000/-. Compensation of ₹70,000/- granted by the Tribunal under the head of *'loss of enjoyment of amenities of life'* also deserves to be enhanced. It is accordingly enhanced from ₹70,000/- to ₹1,00,000/-. Accordingly, the compensation payable to Injured-*Arjun* is reassessed as under: -

Sl. No.	Compensation under various heads	Amount awarded
1.	Loss of Income	₹1,99,134/-
2.	Loss of future earning capacity	₹6,47,185/-
3.	Pain and suffering	₹1,00,000/-
4.	Loss of enjoyment of amenities of life	₹1,00,000/-
5.	Conveyance and special diet	₹40,000/-
6.	Medical expenses	₹3,17,000/-
7.	Attendant charges	₹70,000/-
	Total	**₹14,73,319/-**

19. So far as compensation granted to Injured-*Kamlesh* is concerned, I find that the Tribunal on the basis of Disability Certificate has assessed her functional disability at 30%. However, on perusal of Disability Certificate *(Ex.PW-6/A)* of Injured-*Kamlesh,* I assess her functional disability to be 25% and not 30%, as assessed by the Tribunal. It is so said as Injured-*Kamlesh* was running a Boutique and her income has been assessed on the basis of Income Tax Returns for the relevant period and on the day of the accident, she was aged 46 years. So, in view of Supreme Court's Constitution Bench decision in *Pranay Sethi (supra)*, addition of 25% towards *'future prospects'* is made. Accordingly, the compensation payable to Injured-*Kamlesh* under the head of *'loss of future earning capacity'* is reassessed as under:-

₹12,274/-p.m.X12X125/100 X 13 X 25/100= ₹5,98,357/-

20. Compensation granted by the Tribunal to Injured-*Kamlesh* under the *'non-pecuniary heads'* are found to be on lower side. The compensation of ₹50,000/- granted by the Tribunal under the head of *'pain and suffering'* is enhanced to ₹75,000/- and the compensation

granted by the Tribunal under the head of *'loss of enjoyment of amenities of life'* is enhanced from ₹50,000/- to ₹75,000/-. The compensation granted by the Tribunal under other heads is found to be reasonable and is accordingly maintained. As such, compensation payable to injured-*Kamlesh* is reassessed as under: -

Sl. No.	**Compensation under various heads**	**Amount awarded**
1.	Loss of Income	₹1,47,288/-
2.	Loss of future earning capacity	₹5,98,357/-
3.	Pain and suffering	₹75,000/-
4.	Loss of enjoyment of amenities of life	₹75,000/-
5.	Conveyance and special diet	₹25,000/-
6.	Medical expenses	₹2,30,618/-
7.	Attendant charges	₹50,000/-
	Total	**₹12,01,263/-**

21. In light of the aforesaid, total compensation payable to legal heirs of deceased-*Neetu* is enhanced from ₹34,15,940/-to ₹44,98,940/-. Compensation payable to Injured-*Arjun* is reduced from ₹18,67,852/- to ₹14,73,319/- and compensation payable to Injured-*Kamlesh* is reduced from ₹12,99,646/- to ₹12,01,263/-. The modified compensation shall carry interest @ 9% *per annum.* In case of deceased-*Neetu,* the enhanced compensation alongwith interest be deposited within six weeks by Insurer. The modified compensation be disbursed to *Claimants/Injured* persons as per this Judgment and in the manner and ratio, as indicated in the impugned Awards. Impugned Awards are accordingly modified without disturbing the recovery rights granted by the Tribunal to Insurer.

22. With aforesaid modification in the impugned Awards, the above captioned six appeals and the pending applications are disposed of. Statutory deposit alongwith excess amount, if any, be refunded to Insurer.

(SUNIL GAUR)
JUDGE

AUGUST 07, 2018
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