

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

Date of Decision: September 20, 2018

+ **MAC.APP. 589/2018 & C.M. 25892/2018**

NATIONAL INSURANCE CO LTD. Appellant
Through: Ms. Hetu Arora Sethi, Advocate
Versus

NIDHI BHARGAVA & ORS. Respondents
Through: Mr. Parminder Singh Goindi,
Advocate

+ **MAC.APP. 592/2018 & C.M. 25911/2018**

NATIONAL INSURANCE CO LTD. Appellant
Through: Ms. Hetu Arora Sethi, Advocate
Versus

NIDHI BHARGAVA & ORS. Respondents
Through: Mr. Parminder Singh Goindi,
Advocate

+ **MAC.APP. 796/2018 & C.M. 36166/2018**

NIDHI BHARGAVA & ORS. Appellants
Through: Mr. Parminder Singh & Mr. Nikhil
Sharma, Advocates
Versus

JAVED AFTAR & ORS. (NATIONAL INSURANCE CO LTD.)
..... Respondents
Through: Mr. Parminder Singh Goindi,
Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned three appeals arise out of impugned Award of 20th March, 2018, vide which the Motor Accident Claims Tribunal (*henceforth referred to as “the Tribunal”*) has awarded compensation of ₹31,40,690/- with interest @9% p.a. to Claimants on account of death of a Businessman- *Kapil Bhargava*, aged 43 years, in a vehicular accident which took place on 12th August, 2008.
2. In this unfortunate accident in question, a Housewife- *Nidhi Bhargava*, w/o late *Kapil Bhargava*, was grievously injured and the Tribunal vide common impugned Award of 20th March, 2018, has granted compensation of ₹4,29,543/- with interest @ 9% p.a. to her, which is under challenge in the above appeals.
3. In the above captioned appeals, National Insurance Company Limited (*henceforth referred to as the “Insurer”*) seeks reduction in the quantum of compensation granted by the Tribunal, whereas legal heirs of deceased-*Kapil Bhargava* seek enhancement in the compensation awarded by the Tribunal.
4. Since these three 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:-

*“Facts in brief as emerged from the claim suits
are that on August, 12, 2008, at about 7:30PM, offending*

blue line bus bearing registration No. DL-1PB-0035, was being driven by respondent Javed Aftar at very high speed in a zig-zag manner at DBG road from Karol Bagh side to Anand Parbat. While respondent No.1 was driving the said bus in above said manner, firstly hit a motor cycle bearing registration No.-6SX-6483, which was being driven by Kapil Bhargava and his wife Nidhi Bhargava was a pillion rider. At the time of accident, deceased Kapil Bhargava was waiting for his signal at the red light point. After hitting motor cycle, bus dragged the deceased, consequently, Kapil Bhargava sustained crushed injuries as front wheel of the bus ran over his body. Thereafter, the bus hit the claimant Asghar Ali, who was crossing the road. Consequently, he also sustained multiple grievous injuries. Thereafter, the bus hit another motor cycle bearing registration No. DL-4SAG-3712, which was being driven by deceased Vipin Kumar Dubey, who was also crushed by the bus. Though all the injured were taken to Bali Nursing home, but motor cyclist Kapil Bhargava and Vipin Kumar Dubey succumbed to their injuries whereas Smt. Nidhi Bhargava wife of Kapil Bhargava and Asghar Ali sustained grievous injuries. In this regard, an FIR No.230/2008 for the offence punishable under Section 279/338/304A IPC was registered at PS DBG Road.”

6. To render the impugned Award, the Tribunal has relied upon evidence of Injured-*Nidhi Bhargava*, 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 –*Kapil Bhargava* is as under:-

1	Loss of income	₹30,70,690/-
2	Loss of estate	₹15,000/-
3	Loss of consortium	₹40,000/-
4	Funeral expenses	₹15,000/-
	Total	₹31,40,690/- (rounded off to ₹31,41,000/-)

7. The breakup of compensation awarded by the Tribunal to Injured-*Nidhi Bhargava* is as under:-

1.	Loss of income	₹18,480/-
2.	Medical expenses	₹35,363/-
3.	Conveyance charges	₹10,000/-
4.	Special diet	₹10,000/-
5.	Attendant charges	₹55,700/-
6.	Mental and physical shock	₹1,50,000/-
7.	Pain and Suffering	₹1,00,000/-
8.	Loss of life amenities	₹25,000/-
5.	Loss of inconvenience hardship/disappointment/mental stress	₹25,000/-
	Total	₹4,29,543/- (rounded off to ₹4,30,000/-)

8. The challenge to the impugned Award by learned counsel for

Insurer in the case of deceased-*Kapil Bhargava* is on the ground that while assessing his income, the Tribunal has taken into consideration the income tax return for the assessment year 2008-09. Attention of this Court is drawn to copy of acknowledgement of 10th September, 2008 on record to show that the income tax return for the assessment year 2008-09 was filed after the accident. So, it is submitted that average of income tax return for the assessment year 2007-08 and 2008-09 ought to be the basis for assessing the income of deceased. In respect of *Injured- Nidhi Bhargava*, it is submitted by counsel for Insurer that the compensation granted by the Tribunal under the heads of “*pain and suffering*” and “*mental and physical shock*” is not justified, as both these heads are overlapping. Hence, it is submitted that the quantum of compensation granted to *Injured-Nidhi Bhargava* and Claimants of deceased- *Kapil Bhargava* needs to be suitably reduced.

9. On the contrary, counsel for Claimants and the Injured seeks modification of the impugned Award on the ground that quantum of compensation granted is inadequate. Counsel for Claimants submits that in the case of deceased-*Kapil Bhargava*, the applicable multiplier is of 15 and the Tribunal has erred in applying multiplier of 14, as the deceased was aged 43 years on the day of accident. It is submitted that the compensation granted to *Injured- Nidhi Bhargava* under the heads “*conveyance charges*” and “*loss of amenities of life*” is meager and it be suitably enhanced. Reliance is placed upon decisions in *Santosh Devi Vs. National Insurance Company Ltd. & Ors.* 2012 (6) SCC 421; *Rajesh and Ors. Vs Rajbir Singh & Ors.* (2013) 9 SCC 54 and *Shashikala & Ors. Vs.*

Gangalakshamma & Anr.

10. Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that in the case of deceased-*Kapil Bhargava*, the income tax returns for assessment years 2008-09 was filed on 10th September, 2008 i.e. after the day of accident and so, it has to be excluded from consideration. The income of deceased-*Kapil Bhargava* has to be assessed on the basis of previous assessment year's income tax return i.e. for the year 2007-08. The gross income of deceased in the assessment year 2007-08 was ₹1,25,600/- and after deducting tax of ₹1610/-, the net income of deceased is assessed at ₹1,23,990/-. Deceased-*Kapil Bhargava* was aged 43 years on the day of accident and in view of Supreme Court's decision in *Sarla Verma (Smt.) & Ors. Vs. Delhi Transport Corporation & Anr.* (2009) 6 SCC 121, the Tribunal has rightly applied multiplier of 14. In light of Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680, the Tribunal has rightly made addition of 25% towards "*future prospects*". In view of aforesaid, the "*loss of dependency*" of deceased- *Kapil Bhargava* is reassessed as under:-

$$₹1,23,990/- \times 14 \times 125/100 \times 3/4 = ₹16,27,370/-$$

11. The compensation granted to Claimants of deceased- *Kapil Bhargava* under the non-pecuniary heads is found to be in tune with Supreme Court's Constitution Bench decision in *Pranay Sethi (Supra)*, and is therefore maintained. The compensation payable to legal heirs of deceased- *Kapil Bhargava* is accordingly reassessed as under:-

1	Loss of income	₹16,27,370/-
2	Loss of estate	₹15,000/-
3	Loss of consortium	₹40,000/-
4	Funeral expenses	₹15,000/-
	Total	₹16,97,370/-

12. So far as compensation granted to Injured- *Nidhi Bhargava* is concerned, I find that adequate compensation under the head of “*pain and suffering*” has to be granted. But the Tribunal has erred in granting compensation of ₹1,50,000/- under the over-lapping head of “*mental and physical shock*”, which is hereby declined. The Tribunal has also erred in granting compensation of ₹25,000/- under the head “*loss of inconvenience hardship/ disappointment/mental stress*” and is therefore, declined. The compensation of ₹1,00,000/- granted under the head “*pain and suffering*” is found to be inadequate and therefore it is increased to ₹1,50,000/-. The compensation of ₹25,000/- granted under the head “*loss of amenities of life*” is also inadequate. It is so said because the Injured in her evidence has deposed that she had remained on bed for about two years. Although documentary proof has not been placed on record but considering the medical record of Injured, the compensation granted to Injured-*Nidhi Bhargava* under the head “*loss of amenities of life*” is increased to ₹1,00,000/-. The Tribunal has granted a paltry sum of ₹10,000/- under the head “*conveyance charges*” and it is also increased to ₹25,000/-. However, the compensation granted by the Tribunal under the other heads is found to be justified and is therefore maintained. Accordingly, the compensation granted to Injured-*Nidhi Bhargava* is re-assessed as under:-

1.	Loss of income	₹18,480/-
2.	Medical expenses	₹35,363/-
3.	Conveyance charges	₹25,000/-
4.	Special diet	₹10,000/-
5.	Attendant charges	₹55,700/-
6.	Pain and Suffering	₹1,50,000/-
7.	Loss of life amenities	₹1,00,000/-
	Total	₹3,94,543/-

13. In the light of aforesaid, the compensation payable to legal heirs of deceased–*Kapil Bhargava* is reduced from ₹31,41,000/- to ₹16,97,370/- and compensation payable to Injured- *Nidhi Bhargava* is reduced from ₹4,30,000/- to ₹3,94,543/-. The modified compensation shall carry interest @ 9% *per annum* and it be released forthwith to the legal heirs of deceased- *Kapil Bhargava* and Injured-*Nidhi Bhargava* in the manner, as indicated in the impugned Award. Statutory deposit alongwith excess deposit, be refunded to the Insurer.

14. With aforesaid modification in the impugned Award, the above captioned three appeals and the applications are accordingly disposed of.

न्यायमेव जयते

(SUNIL GAUR)
JUDGE

SEPTEMBER 20, 2018

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