* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: August 21, 2018

\+ **MAC.APP. 709/2016**

NATIONAL INSURANCE CO LTD. ..... Appellant
Through: Ms. Seema Gulati, Advocate

Versus

INDU DEVI & ORS. ..... Respondents
Through: Mr. Anshuman Bal, Advocate for respondents No.1 & 2
Mr. K.B.B.Singh & Mr. Vikrant Guleria, Advocates for respondents No.3 & 4

\+ **MAC.APP. 680/2016**

NATIONAL INSURANCE CO LTD. ..... Appellant
Through: Ms. Seema Gulati, Advocate

Versus

DEEPAK & ORS. ..... Respondents
Through: Mr. Anshuman Bal, Advocate for respondent No.1
Mr. K.B.B.Singh & Mr. Vikrant Guleria, Advocates for respondents No.2 & 3

\+ **MAC.APP. 677/2018**

INDU DEVI & ANR. ..... Appellants
Through: Mr. Anshuman Bal, Advocate

Versus

NATIONAL INSURANCE COMPANY LTD & ORS.

..... Respondents

Through: Ms. Seema Gulati, Advocate for respondent No.1
Mr. K.B.B.Singh & Mr. Vikrant Guleria, Advocates for respondents No.2 & 3

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned three appeals pertain to one vehicular accident, which took place on 1st September, 2010 and so, with the consent of counsel for the parties, these appeals have been heard together and are being disposed of by this common judgment.

2. The above captioned first and third appeals pertain to deceased- *Tinku Kumar @ Tinku*. In the first captioned appeal, Insurer- *National Insurance Company Ltd.* seeks reduction in the quantum of compensation awarded, whereas in the above captioned third appeal, legal heirs of deceased *Tinku Kumar @ Tinku* seek enhancement in the quantum of compensation granted by the Motor Accident Claims Tribunal *(henceforth referred to as the "Tribunal")*. In the above captioned second appeal, Insurer seeks recovery rights against owner and driver of the insured vehicle as also reduction in the quantum of compensation awarded to Injured- *Deepak* by the Tribunal.

3. In this unfortunate vehicular accident in question, a labourer- *Tinku Kumar @ Tinku*, aged 22 years had died and the Tribunal vide impugned Award had granted compensation of ₹8,00,028/- with interest @ 9% p.a. to his legal heirs. In this accident, one-*Deepak,* who was pillion rider on the insured vehicle i.e. the motor cycle, had suffered injuries and the Tribunal had granted to him compensation of ₹1,80,000/- with interest @ 9% *per annum.*

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

> *"This is a claim petition U/s 166 and 140 of the Motor Vehicles Act, 1988 seekign compensation of Rs.30 lakhs for the death of one Tinku @ Tinku Kumar S/o Sh. Sita Ram. Petitioners claim themselves to be parents of said Tinku. According to them, on 01.09.2010, their son alongwith one Deepak was alongwith one Deepak was going some where on a motorcycle. At about 2 p.m. when they reached opposite Shivam Farm House near Pooth Khurd Village, on main Bawana Road, Delhi, a tempo no. DL-ILC-1048 came there, on being driven at very high speed, rashly and negligently and hit their motorcycle. Both of them fell down on road. Tinku @ Tinku Kumar died at spot while Deepak suffered injuries. Deepak filed a separate claim petition having suit no. 553/10. Being offshoot of the same accident, both these petitions are clubbed together, for the purpose of appreciation of evidence. "*

5. To render the impugned Award, the Tribunal has relied upon evidence of Injured and Legal heirs of deceased and other documentary evidence on record. On the strength of evidence recorded, impugned

Award has been rendered.

6. While granting compensation to the Legal heirs of deceased- *Tinku Kumar*, the Tribunal has assessed the *"loss of dependency"* on the basis of minimum wages payable to an unskilled labourer and has made addition of 50% towards *"future prospects"*. Since deceased- *Tinku Kumar* was a bachelor, so, the Tribunal has made deduction of 50% towards *"personal expenses"* and on the basis of age of Legal heirs, the multiplier of 14 has been applied. The breakup of compensation awarded by the Tribunal to Legal heirs of deceased –*Tinku Kumar* is as under:-

1	Loss of dependency	₹6,65,028/-
2	Loss of Love & Affection	₹1,00,000/-
4	Funeral expenses	₹25,000/-
5	Loss of estate	₹10,000/-
	Total	₹8,00,028/-

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

1.	Conveyance	₹10,000/-
2.	Special diet	₹20,000/-
3.	Pain & suffering	₹1,00,000/-
4.	Loss of enjoyment of life	₹50,000/-
	Total	₹1,80,000/-

8. The challenge to the impugned Awards by learned counsel for Insurer is on the ground that driving license of driver of insured vehicle was found to be fake and so, recovery rights ought to be granted against the driver and owner of the insured vehicle. It is submitted by counsel for Insurer that in terms of Supreme Court's Constitution Bench decision in

National Insurance Company Ltd. Vs. Pranay Sethi & Ors. (2017) 16 SCC 680, addition towards future prospects in the case of deceased- *Tinku Kumar* has to be 40% and not 50% and compensation granted under the *non-pecuniary heads* has to be brought in line with Supreme Court's Constitution Bench decision in *Pranay Sethi (Supra)*. In the case of injured- *Deepak*, recovery rights against owner and driver of insured vehicle are sought by counsel for Insurer.

9. On the contrary, learned counsel for Legal heirs of deceased submits that the quantum of compensation granted is inadequate and it needs to be suitably enhanced. It is submitted by counsel for legal heirs that in the case of deceased- *Tinku Kumar,* the Tribunal has erred in applying the multiplier as per the age of legal heirs, whereas in view of Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680, the applicable multiplier has to be as per the age of deceased.

10. On behalf of owner and driver of insured vehicle, learned counsel submits that along with Detailed Accident Report, a copy of driving license of driver of insured vehicle is appended which reveals that driving license in question was initially valid up to 12th June, 2009 and it was thereafter renewed up to 11th June, 2012 and so, no case for grant of recovery rights against driver and owner of the vehicle in question made out. In support of his submission, Counsel for owner and driver of insured vehicle relies upon Supreme Court's decision in *Rakesh Kumar Vs. United India Insurance Co. Ltd. & ors.* 2016 ACJ 2157.

11. Upon hearing and on perusal of impugned Award, evidence on

record and the decisions cited, I find that evidence of *R3W2*, an official from the concerned Regional Transport Authority regarding driving license in question being not issued by the said Authority, remains unchallenged. Even if the driving license in question was renewed up to the year 2012 but that by itself would not justify putting liability on the Insurer to pay the awarded compensation, as the concerned licensing authority has given a report that the driving license in question had not been issued by the said licensing authority. Since the aforesaid evidence remains unchallenged, therefore, the Tribunal has erred in not granting recovery rights to Insurer. Reliance placed by counsel for owner and driver of insured vehicle upon decision in *Rakesh Kumar (supra)*, is misplaced as in the said decision, there was no evidence regarding driving license being fake and invalid, whereas in the instant case there is unchallenged evidence of *R3W2,* official from concerned licensing authority which reveals that driving license relied upon was not issued by the said Authority.

12. As regards quantum of compensation granted by the Tribunal to the legal heirs of deceased- *Tinku Kumar* is concerned, I find that the Tribunal has assessed the income of deceased at ₹5,278/- per month and has made addition of 50% towards *"future prospects"*, as deceased was aged 22 years on the day of accident, whereas in the light of Supreme Court's Constitution Bench decision in *Pranay Sethi (Supra)* addition towards *"future prospects"* has to be 40% and not 50% and the age of deceased should be the basis for applying the appropriate multiplier. So, in the instant case, multiplier of 18 is applied as the deceased was aged 22

years on the day of the accident. Since the deceased was unmarried, deduction of one half towards *"personal expenses"* has to be made. Accordingly, the *"loss of dependency"* is reassessed as under:-

₹5,278/- X 140/100 X 50/100 X 18 X 12= ₹7,98,033/-

(rounded off to ₹7,98,000)/-

13. The compensation granted by the Tribunal 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 to legal heirs of deceased-*Tinku Kumar* under the head of *'loss of love & affection'* is disallowed. The *'funeral expenses'* are reduced from ₹25,000/- to ₹15,000/-. Compensation granted under the head *'loss of estate'* is however enhanced from ₹10,000/- to ₹15,000/-. Consequentially, the compensation payable to legal heirs of deceased-*Tinku Kumar* is reassessed as under:-

1	Loss of dependency	₹7,98,000/-
2	Funeral expenses	₹15,000/-
5	Loss of estate	₹15,000/-
	Total	₹8,28,000/-

14. In the light of aforesaid, total compensation payable to Legal heirs of deceased is enhanced from ₹8,00,028/- to ₹8,28,000/-. The modified compensation shall carry interest @ 9% *per annum*. The enhanced compensation alongwith interest be deposited within six weeks by Insurer and thereafter, it be disbursed to legal heirs of deceased- *Tinku Kumar* in the ratio and manner, as indicated in the impugned Award.

15. So far as quantum of compensation granted to injured- *Deepak* is concerned, I find that the evidence on record justifies the quantum of compensation granted to him and no case for reduction is made out. The compensation awarded by the Tribunal be released to Injured -*Deepak* forthwith, if already not done.

16. With aforesaid modification in the impugned Award, the above captioned three appeals are disposed of. Statutory deposit, if any, be refunded to Insurer.

(SUNIL GAUR)
JUDGE

AUGUST 21, 2018
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