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

Date of Decision: October 11, 2018

\+ **MAC.APP. 380/2016**

SEEMA BEGUM ..... Appellant

Through: Mr. Rajiv Ranjan Dwevedi, Advocate

Versus

ARUN KUMAR SINGH (UNITED INDIA INSURANCE COMPANY LIMITED) ..... Respondent

Through: Mr. Deepak Jain, Advocate for respondent No.1

Mr. Mohit Singh, Mr. Sudhir Nagar & Ms. Bhanu Sanoriya, Advocates for respondent No.2

Mr. Animesh Sinha, Advocate for respondent No.3

\+ **MAC.APP. 497/2017**

ANIL KUMAR ..... Appellant

Through: Mr. Deepak Jain, Advocate

Versus

M/S UNITED INSURANCE CO LTD & ORS. ..... Respondents

Through: Mr. Animesh Sinha, Advocate for respondent No.1

Mr. Rajiv Ranjan Dwevedi, Advocate for respondents No.2 & 3

Mr. Deepak Jain, Advocate for respondent No.4

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

<u>JUDGMENT</u>
(ORAL)

1. The above captioned two appeals are directed against Award of 30th January, 2016 vide which compensation of ₹13,05,000/- with interest @ 12% per annum has been awarded to Claimants, who are the parents of *Javeria Mahmood,* who had died in a vehicular accident on 23rd September, 2011.

2. In the above captioned first appeal, appellant-Claimant seeks enhancement of compensation granted, whereas in the above captioned second appeal, owner of the offending vehicle seek exoneration from paying the compensation granted by the Tribunal. Since these two appeals arise out of common impugned Award of 30th January, 2016, therefore, both these appeals have been heard together and are being decided by this common judgment. The facts as noted in impugned Award are as under:-

> *"The facts in brief as set up by the Petitioners in their Petition are that on 23.09.2011 at about 5.10 PM, deceased Ms. Javeria Mahmood was returning from college on her scooty. As she reached at Pushta Road towards Laxmi Nagar, a vehicle make Mahindra Champion (open body LGV) bearing registration number DL-1LH-8821 (hereinafter referred to as offending vehicle), driven by its driver at a high speed and in a negligent manner hit the scooty from behind and ran over the deceased. The deceased was crushed under the wheels. She was taken to Walia Nursing Home from where she was referred to LBS Hospital. However, she succumbed to her injuries. A case u/s 279/304A IPC was*

registered vide FIR No. 690/11 at Police Station Shakarpur against the respondent no. 1."

3. The Motor Accident Claims Tribunal (hereinafter referred to as 'the Tribunal') has relied upon the evidence of father of deceased and the other evidence on record, to award the compensation as noticed hereinabove. Deceased- *Javeria Mahmood* was aged 17 years on the day of this vehicular accident and as per evidence of her father- *Mahmood Ali Khan (PW-1),* she was a student. The Tribunal has calculated the *"loss of dependency"* while taking notional income of deceased at ₹20,000/- p.m. and after deducting 50% towards *"personal expenses"* and by applying multiplier of 9, *"loss of dependency"* has been assessed at ₹10,80,000/-. Compensation of ₹1,00,000/- has been awarded under the head of '*Loss of love and affection'* and '*Funeral Expenses*' of ₹25,000/- have been granted by the Tribunal. Under the head '*Loss of Estate*' ₹1,00,000/- has been granted. The break-up of compensation awarded by the Tribunal to the Claimants is as under:-

Loss of dependency	₹10,80,000.00
Loss of Love and affection	₹1,00,000.00
Funeral expenses	₹25,000.00
Loss of Estate	₹1,00,000.00
Total	₹13,05,000.00

4. The Tribunal vide impugned Award has directed M/S United India Insurance Company Limited *(henceforth referred to as the "Insurer")* to pay the awarded compensation to mother of deceased, with right to recover it from driver and owner of the insured vehicle.

5. The challenge to the impugned Award by learned counsel for Claimant/ legal heir of deceased is on the ground that the applicable multiplier has to be according to the age of deceased and not as per the age of Claimant, and the Tribunal has erred in not doing so. It is next submitted by counsel for Claimant that denial of interest w.e.f. 14th April, 2014 is unjustified in view of order of order of 3rd February, 2015 in CM(M) 93/2015 *Mahmood Ali Khan & Anr. Vs. Arun Kumar Singh & Ors.* It is further submitted that deceased- *Javeria Mahmood* was a student, who was pursing B.A.LLB and was in 1st Semester and had a bright future ahead and the Tribunal has erred in not granting compensation towards *'future prospects'*. Lastly, it is submitted that the compensation awarded by the Tribunal be suitably enhanced.

6. The stand taken by counsel for Owner of the insured vehicle is that the Tribunal has erred in granting recovery rights to the Insurer on the plea that the Fitness Certificate of the insured vehicle had expired just twenty three days prior to the accident. Reliance is placed upon Kerala High Court's decision in *Augustine, V.M. Vs. Ayyappankutty @ Mani & Anr.* I.L.R. 2015 (2) Kerala 764 to submit that expiry of Fitness Certificate amounts to technical violation only and unless it is proved that the insured vehicle was used for a purpose unauthorized by the permit, recovery rights ought not to be granted. So, it is submitted that grant of recovery rights to Insurer against owner of the insured vehicle is unjustified and so, impugned Award deserves to be modified to extent of denying recovery rights to Insurer.

7. On the contrary, counsel for respondent-Insurer supports the

impugned Award and submits that grant of recovery rights to respondent-Insurer is justified. Reliance is placed upon Supreme Court's decision in *Narinder Singh Vs. New India Assurance Company Limited & Ors.* (2014) 9 SCC 324 to submit that the Insurer is within its rights to repudiate the claim due to expiry of Registration Certificate of insured vehicle and in view of Section 56 of Motor Vehicles Act, 1988, grant of recovery rights to Insurer is justified. On the quantum aspect, counsel for Insurer submits that compensation granted under the non-pecuniary heads needs to be brought in tune with Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680.

8. Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that the Fitness Certificate of insured vehicle had lapsed just a few weeks prior to the accident. It is nobody's case that the vehicle was not being used for a purpose unauthorized by the permit. Not having the Fitness Certificate had not contributed to the causing of accident. Section 56 of the Motor Vehicles Act, 1988 clearly provides that a transport vehicle shall not deemed to be validly registered, unless it carries a certificate of fitness. In the considered opinion of this Court benefit of Supreme Court's decision in *Narinder Singh (Supra)* cannot be availed of by Insurer to avoid the liability to pay the awarded compensation because there is no cross-examination of actual owner of the insured vehicle in question. Even if it is taken that the Insurer had insured the vehicle in question without a Fitness Certificate, then also, the Insurer cannot be permitted to take the benefit of its own wrong. Thus,

this Court is of the considered opinion that liability to pay the awarded compensation cannot be shifted upon owner, as the Insurer of the insured vehicle is liable to pay the awarded compensation.

9. In the considered opinion of this Court, the notional income of deceased ought to be assessed at ₹10,000/- per month, as deceased was a student of B.A.LL.B first year. It is so said because Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680 has clarified that if the deceased is aged above 15 years, then there is no necessity to rely upon Second Schedule of the *Motor Vehicles Act, 1988*. While relying upon Supreme Court's Constitution Bench in *Pranay Sethi (Supra),* addition of 40% towards *"future prospects"* is to be made and while applying the multiplier, the age of deceased has to be taken into consideration and not that of claimant. The Tribunal has therefore erred in applying the multiplier of 09, because multiplier of 18 has to be applied. However, deduction of one half towards personal expense is just and appropriate. Accordingly, the *"loss of dependency"* of deceased is reassessed as under:-

₹10,000/- X 12 X 50/100 X 140/100 X 18= ₹15,12,000/-

10. 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 to legal heir/ claimant of deceased- *Javeria Mahmood* by the Tribunal under the head of *"Loss of Love and affection"* is disallowed. The *"funeral expenses"* are reduced from ₹25,000/- to

₹15,000/- and compensation granted by the Tribunal under the head *"Loss of estate"* is also reduced from ₹1,00,000/- to ₹15,000/-. Accordingly, the compensation payable to legal heir of deceased is reassessed as under:-

Loss of dependency	₹15,12,000.00
Funeral expenses	₹15,000.00
Loss of Estate	₹15,000.00
Total	₹15,42,000.00

11. In light of the aforesaid, compensation granted by the Tribunal to legal heir of deceased- *Javeria Mahmood* is enhanced from ₹13,05,000/- to ₹15,42,000/-. 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 re-assessed compensation shall carry interest @ 9% *per annum*. Insurer is granted six weeks time to deposit the modified compensation with interest @9% per annum with the Registrar General of this Court, which shall be disbursed to the Claimant in the manner as indicated in the impugned Award. Statutory deposit, if any, be refunded to Insurer.

12. While modifying the impugned Award to the aforesaid extent, the above captioned two appeals are accordingly disposed of.

(SUNIL GAUR)
JUDGE

OCTOBER 11, 2018
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