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

***Date of Decision: July 30, 2018***

\+ **<u>MAC.APP. 598/2017</u>**

NATIONAL INSURANCE CO LTD. ..... Appellant

Through: Mr. Sanjay Rawat, Advocate

Versus

VARUN MAHLAWAT & ANR. ..... Respondent

Through: Mr. Rajesh Yadav & Ms. Ruchira Arora, Advocates

\+ **<u>MAC.APP. 601/2017</u>**

NATIONAL INSURANCE CO LTD ..... Appellant

Through: Mr. Sanjay Rawat, Advocate

Versus

VARUN MAHLAWAT ..... Respondent

Through: Mr. Rajesh Yadav & Ms. Ruchira Arora, Advocates

\+ **<u>MAC.APP. 651/2017</u>**

VARUN MEHLAWAT & ANR. ..... Appellants

Through: Mr. Rajesh Yadav & Ms. Ruchira Arora, Advocates

Versus

PIYOOSH GUPTA & ORS (THE NATIONAL INSURANCE CO LTD) ..... Respondents

Through: Mr. Sanjay Rawat, Advocate

+ **MAC.APP. 655/2017**

VARUN MEHLAWAT & ORS. ..... Appellants
Through: Mr. Rajesh Yadav & Ms. Ruchira Arora, Advocates

Versus

PIYOOSH GUPTA & ORS. (THE NATIONAL INSURANCE CO LTD) ..... Respondents
Through: Mr. Sanjay Rawat, Advocate

**CORAM:**
**HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT**
**(ORAL)**

1. The above captioned four appeals arise out of two separate Awards of even date i.e. 16th February, 2017 relating to a vehicular accident which took place on 22nd June, 2011. In this unfortunate accident, *Sh. Satish Kumar,* aged 53 years and his wife *Smt. Rajni*, aged 48 years, had died. Legal heirs of deceased *Satish Kumar* had preferred claim petition No.456/2011 and claim petition No.457/2011 was preferred by legal heirs of deceased *Rajni.* Learned Motor Accident Claims Tribunal *(henceforth referred to as the "Tribunal")* had recorded common evidence but has chosen to render two separate Awards.

2. In the above captioned first two appeals, reduction in quantum of compensation awarded is sought by Insurer, whereas in the above captioned third and fourth appeal, enhancement of compensation is

sought by legal heirs of deceased. With the consent of learned counsel for the parties, these four appeals have been heard together and are being decided by this common judgment.

3. 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 22.06.2011, Sh. Satish Kumar (hereinafter referred to as the "deceased") along with his wife namely Smt. Rajni was travelling in the Car bearing registration no. DL-10C-1234 which at the relevant time was driven by Sh. S.C.Malik. Further, wife of Sh. S.C.Malik was also sitting in the said car on the rear seat and they were coming from Haridwar to Delhi. Further, when at about 3:30 pm, they reached at Village Dadri, suddenly a Truck bearing registration No. HR-55L-3280 (hereinafter referred to as the "offending vehicle") which was going head of their car which at the relevant time was driven by Sh. Peer Ali Gupta/R2 who without giving any signal rashly and negligently suddenly applied brakes and though, Sh. S.C.Malik, who was driving the said car properly and at normal speed also applied the brakes, however, the car rammed into the rear portion of the offending vehicle due to which all the occupants of the car sustained injuries. It is also submitted that the said accident had occurred due to rash and negligent driving of the offending vehicle by R2 at the relevant time and*

*also that the brake lights of the offending vehicle were not working and R2 had suddenly applied the brakes without giving any signal due to which the said accident took place."*

4. On account of death of *Satish Kumar,* a Lawyer by profession, the Tribunal has granted compensation of ₹21,76,488/- with interest @ 9% p.a. to his legal heirs, whereas in the case of *Rajni*, who was self employed, compensation of ₹18,03,720/- with interest @ 9% p.a. has been granted to her legal heirs.

5. The breakup of compensation awarded to legal heirs of late *Satish Kumar* is as under:-

| | | |
|---|---|---|
| 1.) Loss of dependency | : | ₹19,51,488/- |
| 2.) Loss of Love & Affection | : | ₹1,00,000/- |
| 3.) Funeral expenses | : | ₹25,000/- |
| 4.) Loss of estate | : | ₹1,00,000/- |
| Total | : | **₹19,21,992/-** |

6. The breakup of compensation awarded to legal heirs of deceased *Rajni* is as under:-

| | | |
|---|---|---|
| 1) Loss of dependency | : | ₹15,78,720/- |
| 2) Loss of Love & Affection | : | ₹1,00,000/- |
| 3) Funeral expenses | : | ₹25,000/- |
| 4) Loss of estate | : | ₹1,00,000/- |
| Total | : | **₹18,03,720/-** |

7. During the course of hearing, counsel representing both the sides pointed out that in the breakup of compensation granted to legal heirs of late *Satish Kumar*, there is an arithmetical error in totaling and it is so

evident from paragraph No.23 of the impugned Award rendered in claim petition No.456/2011, wherein the total amount of ₹19,21,992/- has been erroneously mentioned instead of actual compensation of ₹21,76,448/- payable to legal heirs of deceased *Satish Kumar***.**

8. Counsel for Insurer assails the impugned Awards on the ground that the claimants were not dependent upon the deceased-*Satish Kumar* and so, they are not entitled to compensation under the head *"loss of dependency"*. Regarding compensation granted under the *"non-pecuniary heads"*, it is submitted by counsel for Insurer that it 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. So, it is submitted that the impugned Awards deserves to be modified.

9. On the contrary, counsel for Claimants submits that the compensation granted by the Tribunal is wholly inadequate and it needs to be suitably enhanced.

10. Upon hearing and on perusal of impugned Awards, evidence on record and the decision cited, I find that it has come in the evidence of Claimant-*Varun* that deceased-*Satish Kumar* had supported Claimants. So, it cannot be said that the Claimants were not financially dependent upon deceased. As regards addition towards *"future prospects"*, it has to be made in terms of decision of Supreme Court in *Pranay Sethi (Supra)*. In the case of deceased- *Satish Kumar*, addition towards *"future prospects"* has to be 10% and not 15%, as granted by the Tribunal. In the case of deceased- *Rajni*, who was aged 48 years on the date of accident,

was self employed and so, addition of 25% towards *"future prospects"* has to be made and the Tribunal has erred in not granting so. In case of deceased –*Rajni,* the Tribunal has erred in relying upon income tax returns of the year 2009-10, while ignoring her income tax return for the year 2010-11 was filed on 31st March, 2011 i.e. before the date of accident and in terms thereof, her income was ₹1,98,232/- p.a. after deduction of tax.

11. In view of aforesaid, the *"loss of dependency"* in case of deceased persons in question, is re-assessed as under:-

| Sl. No. | Name of deceased | Loss of dependency | Total |
|---|---|---|---|
| 1. | Satish Kumar | ₹17,141/- X 12 X 11 X 110/100 X 3/4 | ₹18,66,654/- |
| 2. | Rajni | ₹1,98,232/- X 13 X 125/100 X 2/3 | ₹21,47,513/- |

12. As regards compensation granted under the *non-pecuniary heads*, I find that it needs to be brought in tune with Supreme Court's Constitution Bench decision in *Pranay Sethi (supra)*. Accordingly, the compensation granted by the Tribunal to the legal heirs of deceased-*Satish Kumar and Rajni* under the head of *'loss of love and affection'* is disallowed. The compensation granted under the head *'loss of estate'* is reduced from ₹1,00,000/- to ₹15,000/-. Similarly, *'funeral expenses'* are also reduced from ₹25,000/- to ₹15,000/-.

13. Consequentially, the compensation payable to Claimants is reassessed as under:-

| Sl. No. | Name of deceased | Loss of dependency | Loss of estate | Funeral expenses | Total compensation payable |
|---|---|---|---|---|---|
| 1. | Satish Kumar | ₹18,66,654/- | ₹15,000/- | ₹15,000/- | ₹18,96,654/- |
| 2. | Rajni | ₹21,47,513/- | ₹15,000/- | ₹15,000/- | ₹21,77,513/- |

14. Consequentially, the compensation amount payable to legal heirs of deceased- *Satish Kumar* stands reduced from ₹21,76,448/- to ₹18,96,654/- whereas, compensation payable to legal heirs of deceased- *Rajni* stands enhanced from ₹18,03,720/- to ₹21,77,513/-, which shall carry interest @ 9% *per annum*. The deficit, if any, be made good by the Insurer within six weeks from today and thereafter, the modified compensation be released forthwith to legal heirs of deceased- *Satish Kumar and Rajni* in the ratio as indicated in the impugned Award. Statutory deposit and excess deposit, if any, be refunded to Insurer.

15. With aforesaid directions, the above captioned four appeals are disposed of.

**(SUNIL GAUR)**
**JUDGE**

**JULY 30, 2018**
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