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

Date of Decision: September 19, 2018

\+   **<u>MAC.APP. 614/2017</u>**

UTTAR PRADESH STATE ROAD TRANSPORT CORPORATION .....Appellant

Through: Ms. Garima Prashad and Mr. Shadab Khan, Advocates

Versus

NEHA CHAUHAN & ORS. .....Respondents

Through: Mr. S.N. Parashar, Advocate

\+   **<u>MAC.APP. 807/2018</u>**

NEHA CHAUHAN & ORS .....Appellants

Through: Mr. S.N. Parashar, Advocate

Versus

VINOD KUMAR & ANR. .....Respondents

Through: Ms. Garima Prashad and Mr. Shadab Khan, Advocates

\+   **<u>MAC.APP. 626/2017 & C.M. 25559/2017</u>**

UTTAR PRADESH STATE ROAD TRANSPORT CORPORATION .....Appellant

Through: Ms. Garima Prashad and Mr. Shadab Khan, Advocates

Versus

NEHA CHAUHAN & ORS. .....Respondents

Through: Mr. S.N. Parashar, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned three appeals arise out of impugned Award of 7th April, 2017, vide which the Motor Accident Claims Tribunal *(henceforth referred to as 'the Tribunal')* has awarded compensation of ₹1,47,38,915/- with interest @10% p.a. to Claimants on account of death of a Businessman-*Aman Pratap Singh,* aged 27 years, in a vehicular accident, which took place on 5th February, 2014.

2. In this unfortunate accident, a salesman-*Nishant Kumar*, aged 22 years was grievously injured and the Tribunal vide common Award of 7th April, 2017 has granted compensation of ₹1,95,946/- with interest @10% p.a. to him, which is under challenge in the above captioned third appeal.

3. In the above captioned first and third appeal, *Uttar Pradesh State Road Transport Corporation (hereinafter referred to as 'owner')* seeks modification of the impugned Award on the ground of contributory negligence and seeks reduction in the quantum of compensation awarded and in the rate of interest granted by the Tribunal. In the above captioned second appeal, enhancement of compensation is sought by Claimants/ legal heirs of deceased-*Aman Pratap Singh*.

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:-

> *"The case of the petitioners is that on 05.02.2014 at about 9.30 am Aman Pratap Singh (since deceased) and Nishant Kumar were going to Sadabad, Distt. Hathras from Delhi in Swift car bearing no. DL 9CY 9086 and said car was being driven by the deceased and when they reached near Bedai Bamba, National Highway No.93, PS: Sadabad, Distt. Hathras, U.P, a UP Roadways Bus bearing no. UP 81AF 7767 which was being driven in rash and negligent manner by respondent no.1 came from front side and hit the Swift car with a great force and as a result, Aman Pratap was killed and Nishant received serious injuries."*

6. To render the impugned Award, the Tribunal has relied upon evidence of Injured and mother of deceased and other evidence on record. The breakup of compensation awarded by the Tribunal to legal heirs of deceased–*Aman Pratap Singh* is as under:-

1	Loss of dependency	₹1,43,13,915/-
2	For funeral expenses	₹25,000/-
3	Loss of consortium	₹1,00,000/-
4	Loss of estate	₹1,00,000/-
5	Loss of love & affection to children (1 lac X 1)	₹1,00,000/-
6	Loss of love & affection towards Parents (50,000 X 2)	₹1,00,000/-
	Total	**₹1,47,38,915/-**

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

1.	Medicines & Treatment	₹54,540/-
2.	Attendant charges	₹12,000/-

3.	Conveyance & Special Diet	₹50,000/-
4.	Pain and Suffering	₹50,000/-
5.	Loss of Income	₹29,406/-
	Total	**₹1,95,946/-**

8. The challenge to the impugned Award by learned counsel for the owner of vehicle in question, is on the ground of contributory negligence of deceased in causing the accident in question. Another ground to challenge the impugned Award is that the average income of the deceased as per last three Income Tax Returns *(henceforth referred to as 'ITRs')*, *(which would be around ₹3,35,724/-)*, ought to be taken to assess the *'loss of dependency'*, whereas the Tribunal has erred in relying upon deceased's last year's Income Tax Return, i.e. of assessment year 2013-14, to assess the *'loss of dependency'*. It is pointed out that as per the ITR for the assessment year 2014-15, income of deceased was ₹9,01,230/-. So, it is submitted that there was no loss of *'future prospects'* as the business, which was run by deceased, is still flourishing. It is submitted that in view of Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680, addition towards *'future prospects'* ought to be 40% and not 50% and deduction towards *'personal expenses'* of deceased ought to be one-third, as father of the deceased was not dependent upon him. It is finally submitted by learned counsel for the owner of vehicle in question that the *'non pecuniary damages'* granted by the Tribunal ought to be brought in tune with Supreme Court's decision in *Pranay Sethi (supra)* and the rate of interest awarded ought to be 9% *per annum*.

9. On the contrary, learned counsel for legal heirs of deceased refutes the aforesaid stand taken on behalf of owner of the vehicle in question and submits that the quantum of compensation granted is inadequate and it needs to be substantially enhanced. It is submitted that in the absence evidence of bus driver on the aspect of contributory negligence and in the face of evidence of eye-witness which remains unchallenged, the challenge to impugned Award fails. Lastly, it is submitted that as per ITRs of the assessment years 2009-10 upto 2013-14, the income of the deceased was consistently increasing and so, addition of 50% towards *'future prospects'* made by the Tribunal is justified.

10. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that in view of the site-plan of the place of accident on record, the plea of contributory negligence is not substantiated. Apart from it, evidence of eye-witness-*Nishant* remains unchallenged. Thus, I find that the Tribunal has rightly concluded that the negligence in causing the accident in question was of the driver of bus in question. Such a view is taken as the owner of bus in question has not got the driver of the bus in question examined.

11. A perusal of the ITRs of deceased reveals that the income of the deceased was steadily increasing and so, there is no basis to take into consideration the last three assessment years. In the considered opinion of this Court, the Tribunal has rightly taken into consideration the income of the deceased as per the ITR for the assessment year of 2013-14. It is so said, because there is no cross-examination of the witness from the Income Tax Department on the aforesaid aspect. So, no case for reduction

in quantum of compensation on this count is made out. There is no valid ground to enhance the compensation awarded.

12. Since the deceased was self-employed, therefore, in view of Supreme Court's decision in *Pranay Sethi (Supra),* addition towards *'future prospects'* has to be 40% and not 50%. So far as deduction towards *'personal expenses'* of deceased is concerned, I find that there is no cross-examination of mother of deceased on this aspect. Thus, I find that the Tribunal has rightly made deduction of one-fourth towards *'personal expenses'* of the deceased. Accordingly *'loss of dependency'* of the legal heirs of the deceased is reassessed as under :-

₹7,48,440/- X 140/100 X 17 X 3/4 =₹1,33,59,654/-

13. So far as compensation granted by the Tribunal to the legal heirs of the deceased under the *'non-pecuniary heads'* is concerned, it needs to be brought in tune with Supreme Court's Constitution Bench decision in *Pranay Sethi (supra).* Accordingly, compensation granted by the Tribunal under the head of *'loss of love and affection'* is disallowed and the compensation granted under the head of *'loss of consortium'* is reduced from ₹1,00,000/- to ₹40,000/-; compensation under the head of *'loss of estate'* is reduced from ₹1,00,000 to ₹15,000/- and *'funeral expenses'* are also reduced from ₹25,000/- to ₹15,000/-. The total compensation payable to legal heirs of deceased is as under:-

1	Loss of dependency	₹1,33,59,654/-
2	For funeral expenses	₹15,000/-
3	Loss of consortium	₹40,000/-
4	Loss of estate	₹15,000/-
	Total	**₹1,34,29,654/-**

14. In the light of aforesaid, total compensation payable to legal heirs of deceased is reduced from ₹1,47,38,915/- to ₹1,34,29,654/-. As far as interest granted by the Tribunal is concerned, 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, rate of interest of 10% p.a. awarded by the Tribunal is reduced and it is directed that the re-assessed compensation shall carry interest @ 9% p.a. So far as compensation granted to injured-*Neha* is concerned, I find it to be just and adequate. Statutory deposit alongwith excess deposit, if any, be refunded to the owner and thereafter, compensation as per this judgment be released forthwith to the legal heirs of deceased and the Injured.

15. With aforesaid modification in the impugned Award, the above captioned three appeals and the application are disposed of.

(SUNIL GAUR)
JUDGE

SEPTEMBER 19, 2018
v