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

% *Date of Decision: March 21, 2018*

+ **MAC.APP. 508/2015**

NATIONAL INSURANCE COMPANY LIMITED Appellant
Through: Mr.L.K.Tyagi, Advocate

versus

PREMWATI & ORS Respondents
Through: Mr.Syed Hasan Isfahani and Mr.Vikas
Yadav, Advocates

+ **MAC.APP. 511/2015 & CM No.11562/2015**

NATIONAL INSURANCE COMPANY LIMITED Appellant
Through: Mr.L.K.Tyagi, Advocate

versus

NIRMALA DEVI & ORS Respondents
Through: Mr.Syed Hasan Isfahani and Mr.Vikas
Yadav, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned two appeals are directed against Award of 31st March, 2015 whereby two claim petitions arising out of one vehicular

accident which took place on 16th July, 2007, have been decided. With consent of learned counsel for the parties, both these appeals have been heard together and are being decided by this common judgment. The facts as noted in the impugned Award needs no reproduction. Suffice to note that *Ramendera Singh* aged 45 years and *Ramesh Chandra* aged 49 years (both Government employees) had died in a vehicular accident on 16th July, 2007.

2. In the case of *Late Ramendera Singh*, Motor Accident Claims Tribunal (hereinafter referred to as the Tribunal) has assessed the loss of dependency while applying multiplier of 14 and adding 50% towards future prospects and after deducting 1/4th towards personal expenses. The breakup of the compensation granted to the legal heirs of *Late Ramendera Singh* is as under:-

<i>S.No.</i>	<i>Head</i>	<i>Amount</i>
1.	<i>Loss of dependency (Rs.18019/-x12x14)</i>	<i>Rs.30,27,192/-</i>
2.	<i>Loss of love and affection to children</i>	<i>Rs.1,00,000/-x4 = Rs.4,00,000/-</i>
3.	<i>Loss of love and affection towards Parent</i>	<i>Rs.50,000/-</i>
4.	<i>For funeral expenses</i>	<i>Rs.25,000/-</i>
5.	<i>Loss of estate</i>	<i>Rs.1,00,000/-</i>
6.	<i>Loss of consortium</i>	<i>Rs.1,00,000/-</i>
	<i>TOTAL</i>	<i>Rs.37,02,192/-</i>

3. Whereas in the case of *Late Ramesh Chandra*, multiplier of 13 has been applied and addition of 50% towards future prospects has been made. 1/3rd deduction towards personal expenses has been also made. The breakup of compensation granted to the legal heirs of *Late Ramesh Chandra* is as

under:-

<i>S.No.</i>	<i>Head</i>	<i>Amount</i>
1.	<i>Loss of dependency (Rs.15,578/-x12x13)</i>	<i>Rs.24,30,168/-</i>
2.	<i>Loss of love and affection to children</i>	<i>Rs.1,00,000/-x2 = Rs.2,00,000/-</i>
3.	<i>Funeral expenses</i>	<i>Rs.25,000/-</i>
4.	<i>Loss of estate</i>	<i>Rs.1,00,000/-</i>
5.	<i>Loss of consortium</i>	<i>Rs.1,00,000/-</i>
	<i>TOTAL</i>	<i>Rs.28,55,168/-</i>

4. The Tribunal has directed that the aforesaid compensation shall carry interest @ 9% per annum and the manner in which it has to be apportioned inter se the legal heirs of both the deceased has been also spelt out in the impugned Award.

5. The challenge to the impugned Award by learned counsel for appellant is on the ground that the cheque issued by the owner of the vehicle in question towards the premium for the insurance policy had bounced and so appellant is not liable to pay the awarded amount and so, recovery rights are sought against respondent-owner of the vehicle in question. Learned counsel for appellant submits that the quantum of compensation granted is on higher side and in view of Constitution Bench decision of Supreme Court in *National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.* 2017 SCC OnLine SC 1270 compensation granted deserves to be suitably reduced.

6. As per order of 3rd August, 2016, the legal heirs of the driver and owner of the vehicle in question have been served and they have been proceeded ex-parte. Learned counsel for respondent-claimants submits that

though the liability to pay compensation may be of the owner and driver of vehicle in question but appellant ought to first pay the compensation awarded and thereafter, recover from owner and driver of the vehicle in question. Regarding the quantum of compensation awarded by the Tribunal, it is submitted by learned counsel for respondent-claimants that the compensation awarded is adequate and no case for its reduction is made out. Nothing else is urged by either side.

7. Upon hearing and on perusal of the impugned Award, evidence on record and the decision cited, I find that in view of the unrebutted testimony of appellant's witness R-3W1, the Tribunal has erroneously put the burden on appellant to pay the compensation since the cheque issued by the owner of the vehicle in question towards the premium amount had bounced and the insurance cover was withdrawn by the appellant on account of the non-payment of insurance premium and therefore, liability to pay the compensation is of the owner of the vehicle in question and not of the appellant. In light of the aforesaid, appellant is granted recovery rights qua the owner of vehicle in question.

8. So far as addition of 50% towards future prospects is concerned, I find that the Tribunal has erred in making addition of 50% towards future prospects. Since the deceased were aged 45 and 49 years on the day of the accident, so in view of Supreme Court's decision in *Pranay Sethi* (supra), addition of 30% is to be made towards future prospects.

9. In view of the Constitution Bench decision of Supreme Court in *Pranay Sethi* (supra), the compensation granted on account of 'loss of

dependency’ and under the non-pecuniary heads deserves to be modified. In face of the dictum of Supreme Court in *Pranay Sethi* (supra), compensation granted under the head of ‘*loss of love and affection*’ is disallowed and thereafter the compensation payable to the legal heirs of *Late Ramendera Singh* is re-assessed as under:-

<i>S.No.</i>	<i>Head</i>	<i>Amount</i>
1.	<i>Loss of dependency</i> (Rs.16017/-x12x14x130/100x3/4)	₹26,23,584/-
2.	<i>Funeral Expenses</i>	₹15,000/-
5.	<i>Loss of Estate</i>	₹15,000/-
6.	<i>Loss of Consortium</i>	₹40,000/-
	<i>TOTAL</i>	₹26,93,584/-

10. The compensation payable to legal heirs of *Late Ramesh Chandra* is re-assessed as under:-

<i>S.No.</i>	<i>Head</i>	<i>Amount</i>
1.	<i>Loss of dependency</i> (Rs.15578x12x13x2/3x130/100)	₹21,06,145/-
2.	<i>Funeral Expenses</i>	₹15,000/-
4.	<i>Loss of Estate</i>	₹15,000/-
5.	<i>Loss of Consortium</i>	₹40,000/-
	<i>TOTAL</i>	₹21,76,145/-

11. The impugned Award is modified in the aforesaid terms. The compensation granted to legal heirs of *Late Ramendera Singh* is reduced from ₹37,02,192/- to ₹26,93,584/- which shall carry the interest @ 9% per annum and compensation granted to legal heirs of *Late Ramesh Chandra* is reduced from ₹28,55,168/- to ₹21,76,145/- which shall carry the interest @

9% per annum. Appellant to deposit compensation in terms of this judgment within four weeks and thereafter it be released to the respondent-claimants forthwith by appellant. Recovery rights are granted to appellant qua the owner and driver of the vehicle in question. Statutory deposit and excess deposit, if any, be refunded as per rules.

12. With aforesaid directions, these two appeals and application are disposed of.

(SUNIL GAUR)
JUDGE

MARCH 21, 2018
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