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

Date of Decision: May 21, 2018

\+   **MAC.APP. 523/2015 & CM 11883/2015**

THE NEW INDIA ASSURANCE CO LTD ..... Appellant
Through: Mr. Shoumik Mazumdar, Advocate

versus

SHWETA PANDIT & ORS .....Respondents
Through: Mr. J.C. Mahindro, Mr. Jasmeet Singh and Mr. Shubham Aggarwal, Advocates for Claimants

\+   **MAC.APP. 965/2017**

SHWETA PANDIT & ANR .....Appellants
Through: Mr. J.C. Mahindro, Mr. Jasmeet Singh and Mr. Shubham Aggarwal, Advocates

versus

THE NEW INDIA ASSURANCE CO LTD & ORS ...Respondents
Through: Mr. Shoumik Mazumdar, Advocate for Insurer

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above-captioned first appeal is by the Insurer, who seeks reduction in the quantum of compensation, and the above-captioned second appeal is by Claimants, who seek enhancement of compensation.

2. With consent of learned counsel for the parties, the above captioned two appeals have been heard together and are being disposed of by this common judgment.

3. The subject matter of the above-captioned two appeals is the Award of 11th May, 2015 vide which the Motor Accident Claims Tribunal-01, Dwarka Courts, New Delhi *(hereinafter referred to as 'the Tribunal')* has granted compensation of ₹1,48,93,832/- with interest at 9% *per annum* to the Claimants on account of death of *Col. Jitender Pandit* aged 41 years, in a vehicular accident on 18th December, 2009.

4. The facts emerging from impugned Award are as under: -

> *"It is stated in this claim petition that deceased Col. Jitendra Pandit was serving in the Indian Army C/o 38 Assault Engineer Regiment (Colonel) and on 18.12.2009 he had gone to do reccee of Bhopalpur, Gopalsar, Arjunsar for his unit's exercise and after doing the reccee of Arujnsar he was travelling towards Birajwal head with his staff in two gypsies, Col. Pandit's gypsy was being followed by the others in another gypsy. Col. Pandit was sitting besides the driver's seat and at around 8 pm when his vehicle bearing No. 06B-093772Y was 3 Kms away from Raziyasar on NH 15, At Milestone No. 137 a Civil Truck bearing No. RJ19-1G5831 was wrongly parked covering more than half of the road facing towards Raziyasar, neither its light, nor its indicator was put on and no red flag or light was placed/hanged to show its presence and no obstruction like stone or any other similar thing was laid as to indicate that a vehicle was parked at that place. Another vehicle was coming from Raziyasar i.e. from the opposite direction of the vehicle in which Col. Pandit was travelling, was being driven with full head lights on, the driver of the gypsy could not notice the wrongly parked vehicle due to glare of full head lights and his vehicle collided with the truck, which was wrongly*

parked. Three other people including the driver who were travelling in the vehicle present at the time of this accident, namely Captain Saket Patnawar, Hawaldar D. Murli Kumar, Nayak D. Rajnikant (Driver of the gypsy). After the accident another gypsy which was following Col. Pandit's gypsy noticed the accident and stopped and all the injured persons were taken to Military Hospital Suratgarh. But Co. Jitendra Pandit, Hawaldar D. Murlidhar and Nayak D. Ranjikant were declared brought dead."

5. The Tribunal has relied upon *'last pay certificate' (Ex.PW-4/A)* of deceased, to conclude that deceased was earning ₹76,555/- per month and while taking the annual income of deceased to be ₹9,18,660/-, has deducted 1/4th towards *'personal expenses'* of deceased and has made addition of 50% towards *'future prospects'*. By applying multiplier of 14, the Tribunal has assessed *'loss of dependency'* at ₹1,44,68,832/-. Under the non-pecuniary heads, the Tribunal has granted compensation of ₹1 lac under the head of *'loss of estate'* and ₹25,000/- towards *'funeral expenses'*. Compensation of ₹1 lac under the head of *'loss of consortium'* has been granted by the Tribunal, whereas compensation of ₹50,000/- each to parents of deceased and ₹1 lac to children of deceased under the head of *'loss of love and affection'* has been granted by the Tribunal. The break-up of the compensation granted by the Tribunal, is as under: -

S.No.	*Head*	*Amount*
1.	*Loss of dependency (Rs. 86,124X12X14)*	*Rs. 1,44,68,832/-*
2.	*Loss of love and affection to children*	*Rs. 1,00,000/-*
3	*Loss of love and affection towards Parent*	*Rs.50,000X2= Rs. 1,00,000/-*

4.	*For funeral expenses**	*Rs. 25,000/-*
5.	*Loss of estate**	*Rs. 1,00,000/-*
6.	*Loss of consortium*	*Rs. 1,00,000/-*
	TOTAL	***Rs. 1,48,93,832/-***

6. Learned counsel for Insurer submits that the Insured truck was in a stationary position on the road and it was hit by a Gypsy in which deceased-*Col. Jitender Pandit* was travelling and so, instant case is of composite negligence and therefore, the liability to pay the compensation is to be shared by owners of the truck as well as of the Gypsy in question. It is submitted by learned counsel for Insurer that addition towards *'future prospects'* has to be 30% and that the income tax payable, allowances, etc., has to be excluded, which has not been done by the Tribunal.

7. It is pointed out by Insurer's counsel that in the claim petition, parents of deceased have been shown to be *pro forma* party, to submit that the parents of deceased were not dependent upon him. Thus, it is submitted that deduction towards *'personal expenses'* ought to be 1/3rd and not 1/4th. Reliance is placed upon Supreme Court's Constitution Bench decision in *National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680 to submit that addition towards *'future prospects'* ought to be 30% and not 50%. It is next submitted by Insurer's counsel that compensation granted under the *'Non-Pecuniary Heads'* is on higher side and it needs to be suitably reduced in view of Supreme Court's decision in *Pranay Sethi (supra).*

8. On the contrary, learned counsel for Claimants submits that in view of evidence of eye-witness-*Major Saket Patanwar (PW-2)*, no case of

composite negligence is made out and addition of 50% towards *'future prospects'* is infact inadequate as deceased would have got benefit of 6th and 7th Central Pay Commissions and would have also earned promotion. Regarding deduction of 1/4th of income towards *'personal expenses'*, it is submitted by Claimants' counsel that there were hardly any personal expenses incurred by deceased as he was provided all the facilities being in Armed Forces. Learned counsel for Claimants submits that the compensation granted under the non-pecuniary heads is on the lower side and it needs to be suitably enhanced.

9. Upon hearing and on perusal of impugned Award, the evidence on record and the decision cited, I find that in the face of evidence of eye-witness-*Major Saket Patanwar (PW-2)* and the site plan of the place of accident *(PW-1/6)*, it becomes clear that the negligence was of the driver of insured vehicle and that it is not a case of composite negligence. Regarding income of deceased, I find that the Tribunal has rightly relied upon the *'last pay certificate' (Ex.PW-4/A)*, which indicates that after deduction of tax, etc., *'last pay drawn'* by deceased was ₹76,555/- and so, no case for reduction of compensation on its basis is made out. So far as reliance placed upon Certificate *(Ex.PW-4/B)* is concerned, I find that it merely gives the basic pay/grade pay of Colonel and it does not justify enhancing the *'last pay drawn'* by deceased.

10. So far as addition of 50% towards *'future prospects'* is concerned, I find that in view of Supreme Court's decision in *Pranay Sethi (supra)*, it has to be 30% and not 50%. In the face of evidence of widow of deceased, I find that dependency upon deceased was of widow and children and not of his parents. So, deduction towards *'personal*

expenses' ought to be 1/3rd and not 1/4th. It is ordered accordingly. In light of aforesaid, *'loss of dependency'* is reassessed as under: -

₹9,18,660/- (last pay drawn) plus ₹2,75,598/- (30%)
= ₹11,94,258/-.

₹11,94,258/- minus ₹3,98,086/- (1/3rd personal expenses)
= ₹7,96,172/-.

₹7,96,172/- X 14 (multiplier)= ₹1,11,46,408/-.

11. In view of Supreme Court's decision in *Pranay Sethi (supra)*, compensation of ₹50,000/- each to parents of deceased and ₹1 lac to children of deceased under the head of *'loss of love and affection'* granted by the Tribunal is disallowed, whereas compensation granted under the head of *'loss of estate'* is reduced from ₹1 lac to ₹15,000/- and *'funeral expenses'* are also reduced from ₹25,000/- to ₹15,000/-. Compensation under the head of *'loss of consortium'* is also reduced from ₹1 lac to ₹40,000/-. Consequentially, compensation payable to Claimants is recalculated as under: -

S.No.	***Head***	***Amount***
1.	*Loss of dependency*	*₹1,11,46,408/-*
2.	*Funeral expenses*	*₹ 15,000/-*
3.	*Loss of estate*	*₹ 15,000/-*
4.	*Loss of consortium*	*₹ 40,000/-*
	TOTAL	***₹1,12,16,408/-***

12. In light of the aforesaid, the quantum of compensation granted to the Claimants is reduced from ₹1,48,93,832/- to ₹1,12,16,408/-, which shall carry interest @ 9% *per annum.* The reassessed compensation of ₹1,12,16,408/- be released forthwith to Claimants in terms of this judgment and in the manner and ratio as indicated in impugned Award.

Compliance of this judgment be made within four weeks. Statutory deposit be refunded to Insurer thereafter.

13. These appeals and the pending application are disposed of in the aforesaid terms.

(SUNIL GAUR)
JUDGE

MAY 21, 2018
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