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

Date of Decision: September 11, 2018

\+ **MAC.APP. 46/2017 & C.M. 1647/2017**

NATIONAL INSURANCE CO LTD. ..... Appellant
Through: Mr. S.P. Jain, Ms. Amandeep, Mr. Himanshu Gambhir & Mr. Abhijit Chakrvarty, Advocates

Versus

VIJAY & ORS. ..... Respondents
Through: Mr. Ashok Aggarwal & Mr. Kumar Akash, Advocates

\+ **MAC.APP. 47/2017 & C.M. 1669/2017**

NATIONAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. S.P. Jain, Ms. Amandeep, Mr. Himanshu Gambhir & Mr. Abhijit Chakrvarty, Advocates

Versus

MEGHA & ORS. ..... Respondents
Through: Mr. Ashok Aggarwal & Mr. Kumar Akash, Advocates

\+ **MAC.APP. 51/2017 & C.M. 1740/2017 & 17176/2017**

NATIONAL INSURANCE CO LTD. ..... Appellant
Through: Mr. S.P. Jain, Ms. Amandeep, Mr. Himanshu Gambhir & Mr. Abhijit Chakrvarty, Advocates

Versus

VIJAY & ORS. ..... Respondents
Through: Mr. Ashok Aggarwal & Mr. Kumar Akash, Advocates

\+ **MAC.APP. 66/2017 & C.M. 1915/2017**

NATIONAL INSURANCE CO LTD. ..... Appellants
Through: Mr. S.P. Jain, Ms. Amandeep, Mr. Himanshu Gambhir & Mr. Abhijit Chakrvarty, Advocates

Versus

BHAWNA & ORS. ..... Respondents
Through: Mr. Ashok Aggarwal & Mr. Kumar Akash, Advocates

\+ **MAC.APP. 67/2017 & C.M. 1920/2017**

NATIONAL INSURANCE CO LTD. ..... Appellant
Through: Mr. S.P. Jain, Ms. Amandeep, Mr. Himanshu Gambhir & Mr. Abhijit Chakrvarty, Advocates

Versus

MASTER DEV & ORS. ..... Respondents
Through: Mr. Ashok Aggarwal & Mr. Kumar Akash, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned five appeals arise out of impugned Award of 21st November, 2016, vide which the Motor Accident Claims Tribunal *(henceforth referred to as the "Tribunal")* has awarded compensation of ₹19,52,512/-with interest @ 9% p.a. to legal heirs of deceased- *Narmada,* a house wife, aged 32 years, in a vehicular accident which took place on 3rd February, 2014.

2. In this unfortunate accident in question, an auto driver- *Vijay* was grievously injured and the Tribunal vide impugned Award has granted compensation of ₹30,63,853/- with interest @ 9% p.a. to him, which is under challenge in these appeals. In this accident, minor children- *Megha, Bhawna* and *Master Dev* were also injured. Compensation of ₹45,420/- has been granted by the Tribunal to Injured-*Bhawna*. Injured-*Megha* and *Master Dev* have been granted compensation of ₹25,000/- each by the Tribunal.

3. Since these five 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.

4. The factual background of this case, as noticed in the impugned Award, is as under:-

> *"At the outset it is pertinent to note in the present case there is one deceased namely Smt. Narmada w/o Vijay and four injured persons namely Vijay, S/o Mool Chand, Dev S/o Vijay, Megha, D/o Vijay and Bhawna*

D/o Shri Sunil. As per the material on record the accident in question occurred on 03.02.2014 at about 11:30 PM near Jalebi Chowk, Sultanpuri, Nangloi Road, Delhi due to rash and negligent driving of offending vehicle i.e. Car Swift Dezire bearing registration no. HR-57-8581 which was being so driven by its driver Shri Shyam Sharma S/o Sh. Suresh Sharma which hit the TSR bearing registration no. DL 1RL 8057 in which the above named deceased and injured persons were travelling and the said accident resulted into the death of deceased Smt. Narmada and injuries on the persons of Shri Vijay, Dev, Megha and Bhawna. The driver and owner of the offending vehicle are ex-parte. They have not filed any reply to the DAR, however, the insurance company has filed the reasoned reply to DAR in which it is mentioned that Vehicle no. HR-57-8581 was insured at the relevant time i.e. on 03.02.2014 through policy valid from 01.11.2013 to 31.10.2014 in the name of Mr. Rothas Kumar. It is further mentioned in the said reply of the insurance company that the said alleged offending vehicle was not insured as private vehicle while the said vehicle was registered as commercial vehicle and thus the insured avoided the insurance premium for the commercial category of the vehicle. Due to the accident in question the FIR No.123/2014 was registered at Police Station Sulatan Puri, Delhi under Section 279/337/338/304-A IPC"

5. To render the impugned Award, the Tribunal has relied upon evidence of Claimants/ legal heirs of deceased and other evidence on record. On the strength of evidence so recorded, impugned Award has

been rendered.

6. The breakup of compensation awarded by the Tribunal to legal heirs of deceased-*Narmada* is as under:-

1.	Loss of dependency	₹15,52,512/-
2.	Loss of consortium	₹1,50,000/-
3.	Loss of Love & Affection	₹1,50,000/-
4.	Loss of estate	₹50,000/-
5.	Funeral expenses	₹50,000/-
	Total	₹19,52,512/-

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

1.	Loss of Income including loss of future income	₹28,22,976/-
2.	Pain and suffering	₹1,00,000/-
3.	Medical expenses	₹70,877/-
4.	Loss of enjoyment of amenities of life	₹40,000/-
5.	Conveyance and special diet	₹30,000/-
	Total	₹30,63,853/-

8. The breakup of compensation of ₹25,000 each awarded by the Tribunal to Injured- *Bhawna* is as under:-

1.	Pain and suffering	₹25,000/-
2.	Medical expenses	₹420/-
3.	Loss of enjoyment of amenities of life	₹10,000/-
4.	Conveyance and special diet	₹10,000/-
	Total	₹45,420/-

9. The breakup of compensation of ₹25,000/- awarded by the Tribunal to Injured- *Megha & Dev* is as under:-

1.	Pain and suffering	₹10,000/-
2.	Loss of enjoyment of amenities of life	₹10,000/-
3.	Conveyance and special diet	₹5,000/-
	Total	₹25,000/-

10. Impugned Award grants recovery rights to appellant-*Insurer* while taking note of difference between the premium payable in case of a private car and a taxi and has concluded that the differential in the premium is 11.5% and so, appellant-*Insurer* has been saddled with the liability to pay 88.5% of the awarded compensation with a right to recover the remaining 11.5% of the compensation from the owner and driver of the insured vehicle. In the first instance, appellant-*Insurer* has been directed by the Tribunal to pay the entire compensation payable and then to recover 11.5% from the owner of the insured vehicle.

11. The challenge to the impugned Award by learned counsel for appellant-*Insurer* is on the ground that in view of Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680, in the case of deceased *Narmada*, addition of 40% towards *"future prospects"* ought to be made. It is also submitted that compensation granted under the *'non-pecuniary heads"* needs to be brought in tune with Supreme Court's Constitution Bench decision in *Pranay Sethi (Supra).*

12. In the case of Injured- *Vijay*, it is submitted by counsel for

appellant-*Insurer* that addition of 40% towards *"future prospects"* has to be made and compensation under the *"non-pecuniary heads"* is to be reduced in terms of Supreme Court's Constitution Bench decision in *Pranay Sethi (Supra)*. In the case of Injured-*Bhawna, Megha* and *Master Dev*, it is submitted by counsel for appellant-*Insurer* that the compensation granted to them needs to be reduced, as they had suffered simple injuries only. Lastly, it is submitted by counsel for appellant-*Insurer* that the insured vehicle was a private car, for which insurance was taken but it was being illegally plied as taxi. It is pointed out that for a taxi, higher premium is to be paid to get it insured and the driver as well as owner of the insured vehicle have not come forward to contest before the Tribunal or in these appeals. Thus, it is submitted that liability to pay compensation is of the driver and owner of the insured vehicle and not of the Insurer.

13. On the contrary, counsel for Claimants and Injured supports the impugned Award and submits that the quantum of compensation granted by the Tribunal is just and proper and no case for reduction of compensation is made out. Nothing else is urged by either side.

14. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that in the case of deceased-*Narmada* and Injured- *Vijay,* the Tribunal has erred in making addition of 50% towards *"future prospects"*. In view of Supreme Court's Constitution Bench decision in *Pranay Sethi (Supra)*, addition of 40% towards *"future prospects"* has to be made. Thus, in the case of deceased –*Narmada*, the

"loss of dependency" is re-assessed as under:-

₹8,086/- X 12 X 140/100 X 16 X 2/3 = ₹14,49,011/-

15. In the case of Injured-*Vijay,* the *"loss of earning capacity"* is re-assessed as under:-

₹9,802/- X 12 X 140/100 X 16 = ₹26,34,777/-

16. 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 by the Tribunal to legal heirs of deceased-*Narmada* under the head of *'loss of love & affection'* is disallowed. The *'funeral expenses'* are reduced from ₹50,000/- to ₹15,000/-. Similarly, compensation granted under the head *'loss of estate'* is reduced from ₹50,000/- to ₹15,000/- and compensation granted under the head *'loss of consortium'* is also reduced from ₹1,50,000/- to ₹40,000/-. Consequentially, the compensation payable to legal heirs/ Claimants of deceased-*Narmada* is re-assessed as under:-

1.	Loss of dependency	₹14,49,011/-
2.	Loss of consortium	₹40,000/-
4.	Loss of estate	₹15,000/-
5.	Funeral expenses	₹15,000/-
	Total	₹15,19,011/-

17. Considering that Injured- *Vijay* was aged 35 years on the day of accident and was a professional driver and the permanent physical disability suffered by him is 100% and he is on wheel chair, I find that the

compensation of ₹1,00,000/- granted to him by the Tribunal under the head of *"pain and suffering"* is justified. Even the *"Medical Expenses"* of ₹70,877/- granted by the Tribunal and compensation of ₹40,000/- granted under the head of *"loss of enjoyment of amenities of life"* and ₹30,000/- under the head *"Conveyance and special diet"* are amply justified. Resultantly, the compensation payable to Injured-*Vijay* is re-assessed as under:-

1.	Loss of earning capacity	₹26,34,777/-
2.	Pain and suffering	₹1,00,000/-
3.	Medical expenses	₹70,877/-
4.	Loss of enjoyment of amenities of life	₹40,000/-
5.	Conveyance and special diet	₹30,000/-
	Total	₹28,75,654/-

18. As regards compensation granted by the Tribunal to Injured-*Bhawna, Megha* and *Master Dev* is concerned, I find that the compensation granted to them is just and proper and no case for reduction in the quantum of compensation granted to them is made out.

19. On the liability aspect, I find that driver and owner of the insured vehicle were *ex parte* before the Tribunal and are unrepresented in these appeals, despite service. No evidence has been led by them. It is a matter of record that the premium was paid for obtaining insurance policy of a private vehicle but the insured vehicle was being used for commercial purpose i.e. plying as taxi. The differential in the premium for a private vehicle and taxi may not be substantial but I find that Insurer's witness

(R3W1) in his evidence has categorically asserted that the insured vehicle in question was registered as a commercial vehicle. Thus, it becomes quite evident that the owner of the insured vehicle had concealed the material facts i.e. of insured car being plied as a taxi, though it was insured as a private car.

20. In the considered opinion of this Court, concealment of material facts by owner of the insured vehicle attracts the provisions of Section 149 of the *Motor Vehicles Act, 1988*. The expression *"liability covered by the terms of the policy"* as referred to in Sub-Section 6 of Section 149 of *Motor Vehicles Act, 1988,* gives a discretion to determine as to what is the extent of liability covered. I am of considered opinion that the Tribunal has rightly concluded that the proportionate liability of appellant-*Insurer* would be 88.5% of the total amount of compensation payable, in the light of premium charged, while insuring the car in question as a private car. Recovery rights in respect of 11.5% of the total compensation have been rightly granted to appellant-*Insurer*. The violation of terms and conditions of insurance policy in the instant case is not such, which would entitle the Insurer to avoid the insurance policy. Thus, I find that the Tribunal has rightly determined the liability aspect and impugned Award on this aspect, is therefore maintained.

21. In the light of aforesaid, the compensation payable to legal heirs of deceased-*Narmada* is reduced from ₹19,52,512/- to ₹15,19,011/- and compensation payable to Injured-*Vijay* is also reduced from ₹30,63,853/- to ₹28,75,654/-, which shall carry interest @9% per annum. The

compensation be released to the legal heirs of deceased- *Narmada* and Injured- *Vijay, Bhawna, Megha* and *Master Dev* in terms of this judgment but in the manner as indicated by the Tribunal in the impugned Award. Excess deposit alongwith statutory deposit be refunded to appellant-*Insurer*.

22. The impugned Award is modified to the aforesaid extent. The above captioned five appeals and the applications are accordingly disposed of.

(SUNIL GAUR)
JUDGE

SEPTEMBER 11, 2018
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