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

Date of Decision: August 06, 2018

\+   **MAC.APP. 661/2015**

NATIONAL INSURANCE CO LTD. ..... Appellant

Through: Mr. Pankaj Seth, Advocate

Versus

RAJ RANI & ORS. ..... Respondents

Through: Mr. Anil Panwar & Mr. Rajinder Juneja, Advocates for respondent No.1

Mr. R.S. Lathwal, Advocate for respondents No.2 & 3

\+   **MAC.APP. 662/2015**

NATIONAL INSURANCE CO LTD. ..... Appellant

Through: Mr. Pankaj Seth, Advocate

Versus

MANISH & ORS. ..... Respondents

Through: Mr. Anil Panwar & Mr. Rajinder Juneja, Advocates for respondent No.1

Mr. R.S. Lathwal, Advocate for respondents No.2 & 3

\+   **MAC.APP. 663/2015**

NATIONAL INSURANCE CO LTD ..... Appellant

Through: Mr. Pankaj Seth, Advocate

Versus

RAJ RANI & ORS. ..... Respondents

Through: Mr. Anil Panwar & Mr. Rajinder Juneja, Advocates for respondents No.1 to 4
Mr. R.S. Lathwal, Advocate for respondents No.5 & 6

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 22nd April, 2015 rendered by Motor Accident Claims Tribunal *(henceforth referred to as the "Tribunal")* grants compensation to respondent-*Claimants,* on account of death of a Head Constable of Delhi Police-*Suresh Kumar*, aged 46 years and 05 months on the date of the accident. Impugned Award also grants compensation to Injured-*Raj Rani* and *Manish* on account of injuries suffered by them in the accident in question.

2. To render the impugned Award, the Tribunal has relied upon evidence of Injured/ legal heirs of deceased and other documentary evidence on record. The compensation awarded by the Tribunal to Claimants and Injured *(without interest)* in these appeals, is as under:-

S.No.	Names of Claimants/Injured	Compensation Awarded
1.	Raj Rani	₹1,50,000/-
2.	Manish	₹50,000/-
3.	Raj Rani and Ors. (legal heirs of deceased *Suresh)*	₹41,60,336/-

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

> *"As per the case of petitioners, on 12.07.09, petitioners Smt. Raj Rani and Manish alongwith Suresh Kumar (husband of Smt. Raj Rani and father of Manish) were returning to Delhi after visiting Balaji Mandir in Rajasthan. They were travelling in a car bearing no.DL3 CM 6942. Whey they were near Chatti Mill, Alwar, Rajasthan, a stray cow came on the road. Driver of their Car applied sudden brakes and turned his Car towards the right side. It hit another car (Indica bearing no. RJ 02 CA 2452) coming from opposite side, Suresh Kumar and both of petitioners (Raj Rani and Manish) suffered injuries. Suresh Kumar succumbed to his injuries. FIR 274/09 was registered in PS Sadar, Alwar Rajasthan for offences punishable u/s 279/337/304A IPC."*

4. Out of the above captioned three appeals, first one relates to Injured-*Raj Rani*, the second one pertains to Injured-*Manish* and the third one relates to legal heirs of deceased-*Suresh.* Since these three appeals arise out of aforesaid common impugned Award, 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. While computing the *"loss of dependency"*, the income of deceased- *Suresh Kumar* was assessed by the Tribunal at ₹22,842/- p.m. and multiplier of 13 was applied. Deduction of 1/4th towards *"personal expenses"* and addition of 30% towards *"future prospects"* was made. The break-up of compensation granted by the learned Tribunal to the legal heirs of deceased- *Suresh Kumar* is as under:-

1.	Loss of dependency	₹37,26,336/-
2.	Funeral Expenses	₹25,000/-
3.	Loss of Love & Affection	₹4,00,000/-
4.	Loss of estate	₹10,000/-
	Total	₹41,60,336/-

6. In the case of Injured-*Manish*, the Tribunal has granted lump-sum compensation of ₹50,000/- for *"pain and sufferings"* due to injuries suffered by him in this accident. In the case of Injured-*Raj Rani*, the Tribunal has granted lump-sum compensation of ₹1,00,000/- towards *"medical expenses"* and ₹50,000/- under the head *"pain and sufferings"*.

7. The challenge to impugned Award by learned counsel for appellant-*Insurer* is on the ground that risk of occupants of the insured vehicle is not covered under the insurance policy in question, which is a *liability only policy*. To submit so, reliance is placed upon Supreme Court's decision in *Oriental Insurance Company Ltd. Vs. Sudhakaran K.V. and Ors.* (2008) 7 SCC 428 and *National Insurance Company Limited Vs. Balakrishnan and Anr.* (2013) 1 SCC 731**.** Counsel for appellant-*Insurer* further submits that no negligence is attributable to driver of the insured vehicle and so, the Insurer has no liability to pay the compensation awarded. On the quantum aspect, counsel for Insurer submits that in the case of deceased-*Suresh Kumar*, while assessing his *"loss of dependency",* the Tribunal has taken into consideration 13 months' salary of the deceased, whereas his 12 months' salary ought to have been taken. It is also submitted by counsel for Insurer that legal heirs of deceased- *Suresh* are his father and his children of major age, who were not dependent upon him. And so, it is submitted that deduction of 50% towards *"personal expenses"* ought to have been made and not $1/4^{th}$, as has been done by the Tribunal.

8. It is next submitted that so far as compensation granted to legal heirs of deceased–*Suresh Kumar* under the non-pecuniary heads is concerned, it ought 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.

9. As regards Injured- *Raj Rani*, it is submitted by counsel for Insurer that lump-sum compensation of ₹1,00,000/- has been granted towards *"medical expenses"* though no medical bills were brought on record. It is submitted that compensation granted to Injured- *Raj Rani* and *Manish* under the head *"pain and suffering"* is exorbitant, as there is nothing on record to suggest as to what was the nature of injuries suffered by them. Lastly, it is submitted by counsel for appellant-*Insurer* that these appeals deserve to be allowed.

10. On the other hand counsel for Claimants-Injured and legal heirs of deceased as well as counsel for driver and owner of the vehicle in question, support the impugned Award and submit that the compensation awarded is just and fair. Counsel for driver and owner of the insured vehicle points out that Insurer had not taken the plea of *'liability only policy'* in the written statement before the Tribunal and no evidence had been led by Insurer on this aspect and there was no cross-examination of the witnesses on this point and so, counsel for Insurer be precluded from urging this plea in these appeals and submits that there is no merit in these appeals and so, these appeals be dismissed.

11. Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that the decisions in *Sudhakarn K.V. (Supra)* and *Balakrishnan (Supra)*, are of no assistance to the case of the Insurer, as the original Insurance Policy is not on record and the photocopy of the Insurance Policy placed on record before the Tribunal, is not legible. There is no plea in the reply to the claim petition by the

Insurer regarding the Insurance Policy in question being *Act Policy* or otherwise. Pertinently, there is no cross-examination of the witnesses examined on this aspect. In view thereof, the Insurer's plea of insured vehicle being not covered under the Insurance Policy is without any merit and is hence, negated. Regarding negligence of driver of the insured vehicle, there is no cross-examination of the witnesses examined. Otherwise also, on perusal of evidence and site plan of place of accident on record, I find that there is negligence of driver of vehicle in question, as instead of turning towards right side of the road, he ought to have turned on the left side, which would have certainly avoided happening of the accident in question.

12. On the quantum aspect, I find that the Tribunal has erred in taking into consideration 13 months' salary of deceased- *Suresh Kumar*. Computation of *"loss of income"* has to be on annual income. On the dependency aspect, there is no cross-examination of the witnesses examined and so, deduction of 1/4th towards personal expenses of the deceased is maintained. In view of Supreme Court's decision in *Pranay Sethi (Supra)*, this Court finds that appropriate multiplier has been applied and addition towards *"future prospects"* is also appropriate and is therefore maintained. In view of above, the *"loss of dependency"* in respect of deceased- *Suresh* is reassessed as under:-

₹22,842/- X 12 X 130/100 X 3/4 X 13 = ₹34,74,268/-

13. So far as compensation granted under the *'non pecuniary heads'* is concerned, it needs to be brought in tune with Supreme Court's decision in *Pranay Sethi (Supra).* Accordingly, compensation granted by the Tribunal under the head of *"loss of love & affection"* is disallowed. The

"funeral expenses" are reduced from ₹25,000/- to ₹15,000/- but compensation under the head *"loss of estate"* is enhanced from ₹10,000/- to ₹15,000/-. In addition, the legal heirs of deceased are granted compensation of ₹40,000/- under the head *"loss of consortium"*. Accordingly, the compensation payable to legal heirs of deceased-*Suresh Kumar* is reassessed as under:-

1.	Loss of Dependency	₹34,74,268/-
2.	Loss of Consortium	₹40,000/-
3.	Funeral Expenses	₹15,000/-
4.	Loss of Estate	₹15,000/-
	Total	₹35,44,268/-

14. As regards compensation granted to Injured –*Manish* is concerned, I find that he has deposed before the Tribunal that he had sustained injuries on his mouth, both hands and legs. There is a reference of medical bill Ex PW2/A but copy of medical record has not been filed. Therefore, the Tribunal was justified in not reimbursing medical bills. In the face of evidence of injured-*Manish*, I find that the compensation of ₹50,000/- granted to him under the head *"pain and sufferings"* is justified.

15. So far as compensation granted to Injured- *Raj Rani* is concerned, I find that there are medical prescriptions on record, which indicate that she had remained under treatment from July, 2009 till June, 2012. Although medical bills to this effect are not on record, but while taking into account the fact that she had remained under treatment for a long period, the Tribunal was justified in granting lump-sum compensation of ₹1,00,000/- under the head *"medical expenses"*. The compensation of ₹50,000/-

granted to her under the head *"pain and sufferings"* appears to be justified in the face of evidence on record.

16. Consequentially, the compensation awarded by the Tribunal to legal heirs of deceased- *Suresh Sharma* is reduced from ₹41,60,336/- to ₹35,44,268/- and compensation granted to Injured-*Manish* and *Raj Rani* is maintained. In a recent decision, a Three Judge Bench of Supreme Court in *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, it is directed that the re-assessed compensation shall carry interest @ 9% *per annum*. The reassessed compensation be disbursed to legal heirs of deceased-*Suresh Kumar* in the ratio and manner as indicated in the impugned Award. Awarded compensation with interest @ 9% *per annum* be also released to Injured- *Raj* Rani *and Manish* forthwith. Statutory deposit and excess deposit, if any, be refunded to Insurer.

17. With aforesaid directions, the above captioned three appeals are disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 06, 2018
r