

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

Date of Decision: July 27, 2018

+ **MAC.APP. 756/2015 & CM 2210/2015**

NATIONAL INSURANCE CO LTD Appellant
Through: Ms. Neerja Sachdeva, Advocate

versus

KAMLA CHAUHAN & ORS Respondents
Through: Mr.T.K. Mukherjee and Mr. M.S.
Rawat, Advocates for respondents No.1 to 4

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 30th July, 2015 grants compensation of ₹13,07,090/- with interest @ 9% p.a. to respondents-Claimants on account of death of a driver-*Prithvi Raj* aged 53 years in a vehicular accident on 28th February, 2013.
2. The factual background of this case, as noticed in the impugned Award, is as under:-

“The facts, in brief, as mentioned in the petition are that on 28.02.2013 at about 04:35 am, while the deceased Prithvi Raj Chauhan S/o Late Sh. Padam Singh, was going to his office on his motorcycle make Passion Pro bearing registration no. DL-3SCB-8612, and when he reached near Aali More Red Light, Mathura Road, Badarpur, New Delhi, then all of sudden, one vehicle i.e. Truck bearing registration no. DL-3SCB-8612, being driven by respondent no. 1 rashly and negligently, hit his motorcycle with great force. It is

stated that as a result of the said accident, the victim fell down on the road and sustained injuries on his neck, hands and feet. He was immediately removed to Jai Prakash Narayan Apex Trauma Centre, AIIMS Hospital, where he was declared “brought dead”. The post-mortem is stated to have been conducted at AIIMS Hospital, New Delhi.”

3. On the basis of evidence led, impugned Award has been rendered by Motor Accident Claims Tribunal (SE-01), Saket Courts, New Delhi (*henceforth referred to as “the Tribunal”*) and the breakup of compensation awarded by the Tribunal is as under:-

Loss of dependency	₹8,82,090/-
Loss of Consortium	₹1,00,000/-
Loss of love & affection	₹2,00,000/-
Funeral expenses	₹25,000/-
Loss of Estate	₹1,00,000/-
Total	₹13,07,090/-

4. The challenge to impugned Award by learned counsel for appellant-Insurer is on the ground that driving licence of driver of the insured vehicle was for Light Motor Vehicle (LMV), whereas he was driving aforesaid Truck (*hereinafter referred to as the insured vehicle*), which is a Heavy Motor Vehicle (HMV) and so, the Tribunal ought to have granted the recovery rights to appellant *qua* driver and owner of the insured vehicle. Regarding assessment of income of deceased, it is submitted by appellant’s counsel that addition towards ‘*future prospects*’ ought to be 10%, whereas the Tribunal has erred in making addition of 15% towards ‘*future prospects*’. Regarding ‘*non-pecuniary damages*’, it is submitted by learned counsel for appellant-Insurer that the quantum of compensation granted under this head needs to be reduced in light of

Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680.

5. On the contrary, learned counsel for respondents-Claimants supports the impugned Award and submits that the compensation awarded is just and fair and so, this appeal deserves to be dismissed.

6. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that as per the Report (*Ex.R3W1/2*) of the concerned licencing authority, the driving licence in question was valid for LMV only, whereas the driver of the insured vehicle was found to be driving a truck. The evidence of witness (*R3W1*), who has proved the aforesaid Report (*Ex.R3W1/2*), remains unchallenged. The driver and owner of the insured vehicle have neither contested before the Tribunal nor before this Court. The Tribunal has erred in discarding Report (*Ex.R3W1/2*) of the concerned licencing authority and in relying upon the report of a Police Officer, which is un-exhibited. A perusal of the record reveals that the Police Officer's affidavit does not pertain to the driving licence of driver of the insured vehicle from Farrukhabad and the said affidavit also endorses that the driving licence in question was for LMV. While relying upon the Report (*Ex.R3W1/2*) of the concerned licencing authority, it is held that appellant-Insurer is entitled to grant of recovery rights qua the driver and owner of the insured vehicle.

7. In view of Supreme Court's decision in *Anita & Ors. Vs. Arun Yadav & Ors.* 2017 SCC OnLine SC 1139 and *Pranay Sethi (supra)*, addition towards '*future prospects*' in a case of deceased aged more than 50 years, whose income is assessed on minimum wages, has to be 10% and not 15%. However, this Court finds that the minimum wages of a

skilled person has to be the basis to assess the 'loss of income' as the deceased was a driver by profession and was holding a valid driving licence. The minimum wages of a skilled worker in Delhi on the day of the accident i.e. 28th February, 2013, were ₹8814/- per month. Supreme Court in *Reshma Kumari & Ors. v. Madan Mohan & Anr.*, (2013) 9 SCC 65 has reiterated that it is the obligation of the Court to ensure that the compensation granted is just, fair and proper. Accordingly, the 'loss of dependency' is reassessed as under: -

$$₹8814/-p.m. \times 12 \times 11 \times 110/100 \times 3/4 = ₹9,59,844/-$$

8. As regards compensation granted by the Tribunal under the 'non pecuniary heads', 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 & affection' is disallowed. The 'funeral expenses' are reduced from ₹25,000/- to ₹15,000/-. Similarly, compensation granted under the head 'loss of estate' is also reduced from ₹1,00,000/- to ₹15,000/- and compensation granted under the head 'loss of consortium' is reduced from ₹1,00,000/- to ₹40,000/-.

9. In light of the aforesaid, the compensation payable to respondents-claimants is reassessed as under:-

Loss of dependency	₹9,59,844/-
Loss of Consortium	₹40,000/-
Funeral expenses	₹15,000/-
Loss of Estate	₹15,000/-
Total	₹10,29,844/-

10. Consequentially, the compensation amount payable stands reduced from ₹13,07,090/- to ₹10,29,844/-. The modified compensation shall

carry interest @ 9% *per annum*. Compensation awarded be released forthwith to respondents-claimants in terms of impugned Award. Statutory deposit alongwith excess deposit, if any, be refunded to appellant-Insurer.

11. With aforesaid directions, this appeal and the application are disposed of.

(SUNIL GAUR)
JUDGE

JULY 27, 2018

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