

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

Date of Decision: October 04, 2018

+ **MAC.APP. 1109/2017 & C.M. 46361/2017**

THE NEW INDIA ASSURANCE COMPANY LIMITED

..... Appellant

Through: Ms. Neerja Sachdeva, Advocate

Versus

MUNESH DEVI AND ORS.

..... Respondents

Through: Ms. Aruna Mehta, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL)

1. Impugned Award of 10th October, 2017 grants compensation of ₹22,01,473/- with interest @ 9% p.a. to respondents-claimants on account of death of a Security Supervisor –*Mangal Sain*, aged 44 years, in a vehicular accident on 9th August, 2015.
2. The factual background of this case, as noticed in the impugned Award, is as under:-

“Present DAR pertains to an accident taking place on 09.08.2015 at about 8:45 a.m. at Main Wazirabad Road going towards Ghaziabad in front of Kapoor Petrol Pump, Gokalpuri within the jurisdiction of PS Gokulpuri involving TRUCK NO. HR-74-0348, which was being driven by its driver/ defendant no.1 at a very fast speed, rashly and negligently and which had hit SCOOTY No. DL-8S-BB-8872 from its (Scooty's) backside. The driver of the scooty alongwith scooty had fallen on the road and blood started oozing out of his head. The complainant Mr. Deepak S/o Premvir rushed

to help the driver of the Scooty but complainant found him unconscious. The truck driver parked the truck in a side and came near to the complainant. Other people also started gathering at the spot and someone made a call to 100 number. The truck driver, on seeing the serious condition of driver of the Scooty, swiftly left the place of accident by leaving the truck at the spot. CAT Ambulance took the driver of Scooty to GTB Hospital. Complainant also visited GTB Hospital to know about the condition of driver of Scooty and came to know that driver of Scooty had expired. FIR No. 0642/15 was registered for the offences punishable under Sections 279/304 A IPC. Investigation ended in filing of a charge-sheet for the offences punishable under sections 279/304-A IPC against defendant no.1.”

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

1.	Loss of dependency (10,998/- x 130/100 x12 x14 x3/4)	₹18,01,472.40
2.	Loss of Consortium (Claimant no.1 wife of deceased)	₹1,50,000.00
3.	Loss of love & affection	₹1,50,000.00
4.	Funeral Expenses	₹50,000.00
5.	Loss of estate	₹50,000.00
	Total	₹22,01,472.40
	Rounded to	₹22,01,473.00

4. The challenge to impugned Award by learned counsel for The New India Assurance Company Limited (*henceforth referred to as the “Insurer”*) is on the ground that the Tribunal has erred in making addition of 30% towards “*future prospects*”, whereas in view of Supreme

Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680, addition towards "*future prospects*" ought to be 25%. Reliance is placed upon Supreme Court's Constitution Bench decision in *Pranay Sethi (Supra)*, to seek reduction of the compensation awarded by the Tribunal under the non-pecuniary heads.

5. On the contrary, counsel for respondents-Claimants refutes the aforesaid stand taken by counsel for Insurer and submits that compensation granted by the Tribunal is just and fair. It is submitted that this appeal deserves dismissal.

6. Upon hearing and on perusal of impugned Award, evidence on record and decision cited, I find that from the application form for employment of deceased, it cannot be made out as to what was his nature of employment. No employment letter or certificate is on record which could show whether the deceased was in temporary or permanent employment. The evidence of *Mr. Manish Kaushik (PW-3)* has been scrutinized and thereafter, this Court finds that there is no basis to conclude that the nature of employment of deceased was of permanent nature. So, it is concluded that the deceased was having a fixed salary and in the light of Supreme Court's Constitution Bench decision in *Pranay Sethi (Supra)*, addition of 25% towards "*future prospects*" is to be made. The Tribunal has erred in making addition of 30% towards "*future prospects*". Accordingly, "*loss of dependency*" is re-assessed as under:-

$$₹10,998/- \times 12 \times 125/100 \times 14 \times 3/4 = ₹17,32,185/-$$

7. 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 to legal heirs of deceased by the Tribunal under the head of “*Loss of Love & affection*” is disallowed. The compensation granted under the head “*loss of consortium*” is reduced from ₹1,50,000/- to ₹40,000/-. The compensation granted under the head “*Loss of estate*” and “*funeral expenses*” are reduced from ₹50,000/- to ₹15,000/- each.

8. Accordingly, the compensation payable to legal heirs of deceased is re-assessed as under:-

1.	Loss of dependency (10,998/- x 125/100 x12 x14 x3/4)	₹17,32,185/-
2.	Loss of Consortium	₹40,000.00
3.	Loss of estate	₹15,000.00
4.	Funeral Expenses	₹15,000.00
	Total	₹18,02,185/-

9. In light of the aforesaid, compensation of ₹22,01,473/- granted by the Tribunal to legal heirs of deceased- *Mangal Sain* is reduced to ₹18,02,185/-, which shall carry interest @ 9% per annum. The modified compensation be disbursed to the Claimants in the manner as indicated in the impugned Award. Excess deposit alongwith statutory deposit be refunded to Insurer as per rules.

10. With aforesaid directions, this appeal and application are accordingly disposed of.

(SUNIL GAUR)
JUDGE

OCTOBER 04, 2018

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