

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

Date of decision: August 27, 2018

+ **MAC.APP. 106/2018**

NASARIN

..... Appellant

Through: Mr. Anshuman Bal, Advocate

Versus

MEGMA HDI GEN INS CO LTD & ORS. Respondents

Through: Mr. Ved Tripathi, Advocate for
respondent No.1

Mr. Sarfraz Khan, Advocate for
respondent No.2-owner

+ **MAC.APP. 107/2018**

NAAJREEN & ORS.

..... Appellant

Through: Mr. Anshuman Bal, Advocate

Versus

MEGMA HDI GEN INS CO LTD & ORS. Respondents

Through: Mr. Ved Tripathi, Advocate for
respondent No.1

Mr. Sarfraz Khan, Advocate for
respondent No.2-owner

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned two appeals arise out of impugned Award of 11th August, 2017, vide which the Motor Accident Claims Tribunal (*henceforth referred to as the "Tribunal"*) has awarded compensation of ₹12,58,624/- with interest @ 9% p.a. to Claimants on account of death of

Lock Repairer- *Afsar*, aged 25 years, in a vehicular accident which took place on 9th July, 2016.

2. In this unfortunate accident in question, a Housewife-*Nasarin* was grievously injured and the Tribunal has granted compensation of ₹84,324/- with interest @ 9% p.a. to her, which is under challenge in the above captioned first appeal.

3. Since these two 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:-

“Brief facts of the case is that on 09.07.2016 at about 04.00 PM, petitioner Nasarin and deceased Afsar alongwith other persons were going from Kabela Aligarh to Sadabad, Aligarh in a vehicle bearing registration No. UP-86T-2821 which was driven by respondent No.1 in a rash and negligent manner and with high speed. All the occupants of above-said vehicle asked the respondent No.1 to drive carefully, but he kept on driving the vehicle in rash and negligent manner. When the vehicle reached in front of Shri R B Cold Storage, Chandpa, respondent No.1 overtook another vehicle in negligence manner and the vehicle overturned due to which all occupants alongwith petitioner Nasarin and deceased Afsar suffered injuries. Petitioner was taken to Tyagi Hospital, Aligarh. Deceased was taken to District Hospital, Hathras. Later on, he was taken to Safdarjung Hospital, New Delhi where he died on 16.07.2016.”

5. To render the impugned Award, the Tribunal has primarily relied upon evidence of Injured-*Nasarin* and Claimants/ legal heirs of deceased-*Afsar* and evidence of Respondent-Insurer on record. On the strength of evidence recorded, impugned Award has been rendered.

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

1	Loss of dependency	₹10,23,624/-
2	Funeral Expenses	₹25,000/-
3	Loss of Love & Affection	₹1,00,000/-
4	Loss of estate	₹10,000/-
5	Loss of Consortium	₹1,00,000/-
	Total	₹12,58,624/-

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

1.	Compensation for medical expenses	₹18,000/-
2.	Compensation for special diet, attendant and conveyance	₹15,000/-
3.	Compensation for pain and sufferings	₹30,000/-
4.	Compensation for loss of income	₹21,324/-
	Total	₹84,324/-

8. Learned counsel for appellants seeks modification of the impugned Award to the effect that liability to pay the awarded compensation should be of the Respondent-Insurer, while relying upon a recent Supreme Court decision in *Manuara Khatun & ors. Vs. Rajesh Kumar Singh & Ors.* (2017) 4 SCC 796 and submits that the Respondent-Insurer must pay and recover. Enhancement in the quantum of compensation granted to legal

heirs of deceased-Afsar, is sought on the ground that the Tribunal has assessed income of deceased on minimum wages payable to an unskilled workman in U.P. but has failed to make any addition towards “*future prospects*”. Reliance is placed by appellants’ counsel upon Supreme Court’s Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680 to seek addition of 40% towards “*future prospects*”, as deceased was aged 25 years on the day of accident.

9. It is also submitted by counsel for appellants that the Tribunal has erred in deducting 1/3rd towards personal expenses. It is pointed out that the widow of deceased in her evidence has clearly deposed that father of deceased was also dependent upon him and so, deduction of 1/4th towards personal expenses ought to have been made.

10. The opposition to these appeals by learned counsel for Respondent-Insurer is on the ground that the liability is of the driver and owner of the vehicle in question and Respondent-Insurer has no liability to pay the awarded compensation. It is submitted that awarded compensation is not required to be enhanced on the basis of Supreme Court’s Constitution Bench decision in *Pranay Sethi (Supra)*, as the said decision had been rendered after passing of the impugned Award. It is also submitted on behalf of Respondent-Insurer that the income of deceased has not been established and so, appellant cannot avail of the benefit of Supreme Court’s Constitution Bench decision in *Pranay Sethi (Supra)*. Nothing substantial has been urged on behalf of owner and driver of insured vehicle.

11. Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that the Tribunal has rightly assessed the income of deceased-Afsar on the basis of minimum wages of an unskilled workman applicable in U.P. In view of Supreme Court's Constitution Bench decision in *Pranay Sethi (Supra)*, addition of 40% towards "*future prospects*" is made. Since father of deceased-Afsar was also dependent upon him, therefore, deduction of 1/4th and not 1/3rd towards personal expenses is made. Accordingly, the "*loss of dependency*" to legal heirs of deceased-Afsar, is re-assessed as under:-

$$₹7,108/-(rounded\ off) \times 12 \times 140/100 \times 3/4 \times 18 = ₹16,12,095/-$$

12. 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-Afsar under the head of '*loss of love & affection*' is disallowed. The '*funeral expenses*' are reduced from ₹25,000/- to ₹15,000/- and '*loss of consortium*' is also reduced from ₹1,00,000/- to ₹40,000/-. However, compensation granted under the head '*loss of estate*' is enhanced from ₹10,000/- to ₹15,000/- Consequentially, the compensation payable to legal heirs of deceased-Afsar is reassessed as under:-

1	Loss of dependency	₹16,12,095/-
2	Funeral Expenses	₹15,000/-
3	Loss of estate	₹15,000/-
5	Loss of Consortium	₹40,000/-
	Total	₹16,82,095/-

13. In the light of aforesaid, total compensation payable to legal heirs

of deceased- *Afsar* is enhanced from ₹12,58,624/- to ₹16,82,095/-. The reassessed compensation shall carry interest @ 9% *per annum*. The enhanced compensation alongwith interest be deposited with the Registrar General of this Court by respondent-Insurer within six weeks and thereafter, it be disbursed to legal heirs of deceased-*Afsar* in the ratio and manner, as indicated in the impugned Award. So far as Injured-*Nasarin* is concerned, I find that the quantum of compensation granted to her is just and reasonable and is hence maintained. The compensation awarded be released to Injured- *Nasarin* forthwith.

14. In view of Supreme Court's decision in *Manuara Khatun (Supra)*, the respondent-Insurer has to first pay the awarded compensation and thereafter recover it, from the owner and driver of the insured vehicle. Accordingly, respondent-Insurer is granted recovery rights against owner and driver of insured vehicle in question.

15. With aforesaid directions, the above captioned two appeals are disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 27, 2018

r