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

Date of Decision: August 01, 2018

\+ **MAC.APP. 904/2015**

NATIONAL INSURANCE CO LTD. ..... Appellant

Through: Mr. Pankaj Seth, Advocate

Versus

VEENA & ORS. ..... Respondents

Through: Mr. S.N.Prashar, Advocate

\+ **MAC.APP. 906/2015**

NATIONAL INSURANCE CO LTD. ..... Appellant

Through: Mr. Pankaj Seth, Advocate

Versus

KAMLESH & ORS. ..... Respondents

Through: Mr. S.N.Prashar, Advocate

\+ **MAC.APP. 913/2015**

NATIONAL INSURANCE CO LTD. ..... Appellant

Through: Mr. Pankaj Seth, Advocate

Versus

JITENDER TANWAR & ANR. ..... Respondents

Through: Mr. Arun K.Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 9th September, 2015 rendered by Motor Accident Claims Tribunal *(henceforth referred to as the "Tribunal")* grants compensation to respondent-*Claimants,* on account of death of a vegetable seller- *Varun* s/o Lala Ram, aged 22 years; Shop keeper- *Ajay* s/o Vijay Kumar, aged 20 years and a housewife- *Sonia* w/o Jitender, aged 25 years. Parents of deceased- *Varun* had preferred Claim Petition No. 640/2011 to seek compensation, as deceased was a bachelor when this accident had taken place. Deceased- *Ajay* was also a bachelor and so, the Claim Petition No. 641/2011 was preferred by his parents. Another Claim Petition No. 3/12/12 was preferred by husband of deceased- *Sonia*.

2. To render the impugned Award, the Tribunal has relied upon evidence of Claimants/ legal heirs of deceased and other documentary evidence on record. The compensation awarded by the Tribunal to Claimants with interest @ 9% p.a. in these appeals, is as under:-

S.No.	Name of deceased	Compensation Awarded
1.	Ajay s/o Vijay Kumar	₹20,40,416/-
2.	Varun s/o Lala Ram	₹20,40,416/-
3.	Sonia w/o Jitender	₹12,34,876/-

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

> *"An FIR bearing number 186/2011 was registered on the statement of one Hem Raj. He stated that on 18.06.2011, he was travelling in his car bearing number UP-14-C-8801 and his niece Sonia, Ajay, Varun were travelling by Swift car bearing number DL-2C-AK-9757 which was driven by Jitender husband of his niece Sonia*

and went to Kokeela Van, Kosi. He was driving behind the Swift car and they stopped at Vamni Khera Hotel for having some food. He further stated that he told Jitender that drive the car carefully but Jitender was driving the car in rash and negligent way and when he reached GT road, Mundkati Chawki and he saw that car turned turtle and he asked Jitender what happened he said nothing and he saw Ajay died due to head injuries. He removed Varun and Sonia to the hospital but Varun died on the way to the hospital. He admitted Sonia in Om Hospital where she also died."

4. 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. The above captioned first two appeals pertain to legal heirs of deceased- *Ajay and Varun,* whereas above captioned third appeal relates to legal heir of deceased- *Sonia.*

5. While computing the *"loss of dependency"*, the income of deceased- *Ajay* was assessed by the Tribunal on minimum wages payable to a matriculate and multiplier of 18 was applied. Deduction of 1/3rd toward *"personal expenses"* and addition of 50% towards *"future prospects"* was made. The break-up of compensation granted by the learned Tribunal to the legal heirs of deceased- *Ajay* is as under:-

1.	Loss of dependency	₹16,90,416/-
2.	Funeral Expenses	₹50,000/-
3.	Loss of Love & Affection	₹2,00,000/-
4.	Loss of estate	₹1,00,000/-
	Total	₹20,40,416/-

6. The Tribunal has assessed the income of deceased- *Varun* while taking the minimum wages of a matriculate and by making addition of 50% towards *"future prospects"*. The multiplier applied is of 18 and 1/3rd towards *"personal expenses"* has been deducted. The break-up of compensation granted to the legal heirs of deceased- *Varun* is as under:-

1.	Loss of dependency	₹16,90,416/-
2.	Funeral Expenses	₹50,000/-
3.	Loss of Love & Affection	₹2,00,000/-
4.	Loss of estate	₹1,00,000/-
	Total	₹20,40,416/-

7. In the case of deceased- *Sonia*, minimum wages of a non-matriculate were made the basis to assess the *"loss of dependency"* while adding 25% towards *"future prospects"* and applying multiplier of 18. But no deduction towards *"personal expenses"* was made. The break-up of compensation granted by the Tribunal to legal heir of deceased- *Sonia* is as under:-

1.	Loss of dependency	₹11,49,876/-
2.	Loss of Love & Affection	₹25,000/-
3.	Loss of consortium	₹10,000/-
4.	Funeral expenses	₹50,000/-
	Total	₹12,34,876/-

8. Despite service, the driver and owner of the insured vehicle have not contested before the Tribunal and this Court as well.

9. The challenge to the impugned Award by learned counsel for appellant-*Insurer* is on the ground that negligence of driver of the insured

vehicle has not been established and so, the claim petitions ought to be dismissed. It is next submitted by counsel for Insurer that the Tribunal has erred in making addition of 50% towards *"future prospects"* because deceased- *Varun and Ajay* were not having any established income and even their occupation does not stand proved. Alternatively, it is submitted that the Tribunal has erred in making addition of 50% towards future prospects and in any case, addition of 40% of established income only can be made. Counsel for Insurer further submits that deceased- *Ajay* and *Varun* were bachelors and so, deduction of 50% towards *"personal expenses"* has to be made and the Tribunal has erred in deducting 1/3rd towards personal expenses of deceased. It is also submitted by counsel for Insurer that the applicable multiplier is as per the age of claimants and not as per the age of the deceased. It is further submitted by counsel for Insurer that 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 *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680.

10. As regards compensation granted to legal heirs of deceased- *Sonia* is concerned, it is submitted by counsel for Insurer that deceased- *Sonia* was a housewife and no deduction towards her *"personal expenses"* has been made by the Tribunal.

11. Counsel for Insurer submits that the Tribunal has erroneously concluded that the insured vehicle was not driven by *Jitender* even though FIR was registered and charge sheet was filed against him. It is pointed out by counsel for Insurer that in the Claim Petition filed by

Jitender, relief was sought against owner and insurer of the vehicle in question only. Thus, it is submitted that the finding returned by the Tribunal on the issue of negligence is inconclusive as to who was driving the insured vehicle on the day of accident. So, it is submitted that the petition filed by Claimant- *Jitender* was not maintainable and hence, the compensation granted to him deserves to be disallowed. Lastly, it is submitted that imposition of penal interest by the Tribunal is not justified, as appellant has a statutory right to file the appeal.

12. On the contrary, counsel for respondents-*Claimants* supports the impugned Award and submits that the compensation granted by the Tribunal is just and fair and so, these appeals deserve to be dismissed. Counsel for Claimant-*Jitender* has placed on record judgment of 12th October, 2015 of the criminal court to show that Claimant-*Jitender* was acquitted by the criminal court, as it was not proved that he was driving the insured vehicle on the day of the accident. So, the compensation awarded to legal heirs of deceased-*Sonia* is sought to be justified by learned counsel for Claimant-*Jitender.*

13. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that the finding returned by the Tribunal on the negligence aspect is inconclusive but in view of acquittal of Claimant-*Jitender* by the criminal court, it can be conclusively inferred that he was not driving the insured vehicle on the day of accident. Though the evidence of eye witness- *Hem Raj* has been discarded by the criminal court as well as by the Tribunal but in the face of evidence on record, it emerges that the insured vehicle was driven by deceased- *Ajay* on the day

of the accident. Thus, the grant of compensation by the Tribunal to legal heirs of deceased- *Sonia* is justified. However, the Tribunal has erred in not making any deduction towards personal expenses of deceased- *Sonia*. Deceased-*Sonia* was a housewife, aged 25 years and in view of Supreme Court's decision in *Jitendra Khimshankar Trivedi & ors. Vs. Kasam Daud Kumbhar & Ors.*(2015) 4 SCC 237, her notional income has to be assessed at ₹3,000/- p.m. and after deducting 1/3rd towards personal expenses, her contribution to the family is re-assessed as under:-

₹3,000/- p.m. X 2/3 = ₹2,000/- p.m.

14. As regards, application of multiplier is concerned, in view of Supreme Court's decision in *Pranay Sethi (Supra),* multiplier has to be applied as per the age of deceased and not claimant and 40% addition towards *"future prospects"* has to be made. Considering deceased- *Sonia* to be self employed, her notional income has to be taken as her established income. Accordingly, the *"loss of dependency"* of deceased- *Sonia* is reassessed as under:-

₹3,000/- X 2/3 X 12 X 18 X 140/100 = ₹6,04,800/-

15. As regards compensation granted under the *'non pecuniary heads'*, it needs to be brought in tune with Supreme Court's decision in *Pranay Sethi (supra).* Accordingly, compensation granted to legal heirs of deceased- *Sonia* by the Tribunal under the head of *"loss of love & affection"* is disallowed. However, *"funeral expenses"* are reduced from ₹50,000/- to ₹15,000/- and compensation granted under the head *"loss of consortium"* is increased from ₹10,000/- to ₹40,000/-. In addition,

compensation of ₹15,000/- is granted under the head *"loss of estate"*. Accordingly, the compensation payable to legal heir of deceased-*Sonia* is reassessed as under:-

1.	Loss of Dependency	₹6,04,800/-
2.	Loss of Consortium	₹40,000/-
3.	Funeral Expenses	₹15,000/-
4.	Loss of Estate	₹15,000/-
	Total	₹6,74,800/-

16. As regards compensation granted to legal heirs of deceased- *Varun* and *Ajay* is concerned, I find that the Tribunal has rightly assessed their income on minimum wages. Since deceased- *Varun* and *Ajay* were bachelors, therefore, deduction of 50% towards *"personal expenses"* has to be made and not 1/3rd as done by the Tribunal. Similarly, the Tribunal has erred in making addition of 50% towards *"future prospects"*, as in view of Supreme Court's decision in *Pranay Sethi (Supra)*, addition towards *"future prospects"* has to be 40%. In view of above, the *"loss of dependency"* in case of deceased- *Varun* and *Ajay* is re-assessed as under:-

₹7,826/- X 140/100 X 50/100 X 18 X 12 = ₹11,83,291/-

17. So far as compensation granted under the *'non pecuniary heads'*, to deceased- *Varun and Ajay* 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 ₹50,000/- to ₹15,000/- and compensation under the head *"loss of estate"*

is also reduced from ₹1,00,00/- to ₹15,000/-. Accordingly, the compensation payable to legal heirs of deceased-*Varun* and *Ajay* is reassessed as under:-

1.	Loss of Dependency	₹11,83,291/-
3.	Funeral Expenses	₹15,000/-
4.	Loss of Estate	₹15,000/-
Total		₹12,13,291/-

18. Consequentially, the compensation awarded to legal heir of deceased- *Sonia* by the Tribunal is reduced from ₹12,34,876/- to ₹6,74,800/- and compensation granted by the Tribunal to deceased-*Varun* and *Ajay* is reduced from ₹20,40,416/- to ₹12,13,291/-. The modified compensation shall carry interest @ 9% p.a. The modified compensation be released forthwith to Claimants in the ratio and manner as indicated in the impugned Award. Statutory deposit along with excess deposit, if any, be refunded to appellant-*Insurer*.

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

(SUNIL GAUR)
JUDGE

AUGUST 01, 2018
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