

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

*Date of decision: August 28, 2018*

+ **MAC.APP. 869/2015 & C.M. 27364/2015**

NATIONAL INSURANCE CO LTD. .... Appellant

Through: Mr. Pradeep Gaur, Advocate

Versus

PREM LATA & ORS. .... Respondents

Through: Mr. Gurmit Singh Hans &  
Ms. Aarti Manchanda, Advocates

+ **MAC.APP. 870/2015 & C.M. 27054/2015**

NATIONAL INSURANCE CO LTD. .... Appellant

Through: Mr. Pradeep Gaur, Advocate

Versus

BABLI & ORS. .... Respondents

Through: Mr. Gurmit Singh Hans &  
Ms. Aarti Manchanda, Advocates

+ **MAC.APP. 873/2015 & C.M. 27063/2015**

NATIONAL INSURANCE CO LTD. .... Appellant

Through: Mr. Pradeep Gaur, Advocate

Versus

LALITA & ORS. .... Respondents

Through: Mr. Gurmit Singh Hans &  
Ms. Aarti Manchanda, Advocates

**CORAM:**  
**HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT**  
**(ORAL)**

1. Impugned Award of 25<sup>th</sup> July, 2015 rendered by Motor Accident Claims Tribunal (*henceforth referred to as the "Tribunal"*) grants compensation to respondents-*Claimants*, on account of death of a Driver- *R.Anil*, aged 35 years; Driver- *Raju Singh*, aged 40 years and a Peon- *Ramesh*, aged 28 years. Claimants-*Prem Lata & Ors.* (in MAC.APP. 869/2015) are the legal heirs of deceased- *R.Anil*. Claimants- *Babli & Ors.* (in MAC.APP. 870/2015) are the legal heirs of deceased- *Raju Singh* and Claimants –*Lalita & Ors.* (in MAC.APP. 873/2015) are the legal heirs of deceased- *Ramesh*.

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

| S.No. | Name of deceased | Compensation Awarded |
|-------|------------------|----------------------|
| 1.    | R.Anil           | ₹18,01,912/-         |
| 2.    | Raju Singh       | ₹25,16,500/-         |
| 3.    | Ramesh           | ₹33,91,696/-         |

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

*"Brief facts of the case are that on 16.10.2012 Sh. Raju Singh (since deceased in suit no.18/13) was driving*

*the motorcycle bearing no. DL-5SY-5406 and his friends namely Sh. R.Anil and Sh. Ramesh Kumar were sitting as pillion rider on the said motorcycle and at about 00.05 AM when they reached at Shankar Road (towards RML Hospital) after crossing the round about, suddenly a maruti esteem car bearing no.DL-8CB-4173 (hereinafter called as offending vehicle) being driven in rash and negligent manner by R-1 came from back side and hit the motorcycle of deceased as a result of which they fell down on the road. All the injureds were taken to Dr.RML hospital where they were declared brought dead”*

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.

5. While computing the “loss of dependency”, the income of deceased- R.Anil was assessed by the Tribunal on minimum wages payable to an unskilled worker and multiplier of 16 was applied. Deduction of 1/4<sup>th</sup> towards “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- R.Anil is as under:-

|    |                                 |              |
|----|---------------------------------|--------------|
| 1. | Loss of dependency(₹8161X12X16) | ₹15,66,912/- |
| 2. | Loss of Love & Affection        | ₹1,00,000/-  |
| 3. | Loss of Estate                  | ₹10,000/-    |
| 4. | For funeral expenses            | ₹25,000/-    |
| 5. | Loss of consortium              | ₹1,00,000/-  |
|    | Total                           | ₹18,01,912/- |

6. The Tribunal has assessed the income of deceased- *Raju Singh* at ₹13,000/- p.m. on the basis of Salary Certificate (*Ex. PW7/1*) and has made an addition of 30% towards “*future prospects*”. The multiplier applied is of 15 and 1/4<sup>th</sup> towards “*personal expenses*” has been deducted. The break-up of compensation granted to the legal heirs of deceased- *Raju Singh* is as under:-

|    |                                     |              |
|----|-------------------------------------|--------------|
| 1. | Loss of dependency(₹12,675/-X12X15) | ₹22,81,500/- |
| 2. | Loss of Love & Affection            | ₹1,00,000/-  |
| 3. | Loss of estate                      | ₹10,000/-    |
| 4. | For Funeral Expenses                | ₹25,000/-    |
| 5. | Loss of consortium                  | ₹1,00,000/-  |
|    | Total                               | ₹25,16,500/- |

7. In the case of deceased- *Ramesh*, Salary Certificate (*Ex.PW4/1*) was made the basis to assess the “*loss of dependency*” while adding 50% towards “*future prospects*” and by applying multiplier of 17. Deduction of 1/3<sup>rd</sup> towards “*personal expenses*” was made. The break-up of compensation granted by the Tribunal to legal heir of deceased- *Ramesh* is as under:-

|    |                                    |              |
|----|------------------------------------|--------------|
| 1. | Loss of dependency(₹15474/-X12X17) | ₹31,56,696/- |
| 2. | Loss of Love & Affection           | ₹1,00,000/-  |
| 3. | Loss of estate                     | ₹10,000/-    |
| 4. | For Funeral Expenses               | ₹25,000/-    |
| 5. | Loss of consortium                 | ₹1,00,000/-  |
|    | Total                              | ₹33,91,696/- |

8. Despite service, the driver and owner of the insured vehicle have neither contested before the Tribunal nor before this Court.

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. Alternatively, counsel for appellant-*Insurer* submits that all the three deceased were under the influence of liquor at the time of this accident and so, it is a case of contributory negligence. It is pointed out by counsel for appellant-*Insurer* that the registration number of the insured vehicle has not been mentioned in the FIR and it was provided by one-*Krishan Kumar* after about one month of the accident and the said *Krishan Kumar* has not come forward to depose in this case.

10. On the aspect of quantum of compensation awarded to deceased-*R.Anil*, counsel for appellant-*Insurer* submits that the Tribunal has erred in making addition of 50% towards “*future prospects*” and infact, addition of 40% has to be made in terms of Supreme Court’s Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680. Lastly, it is submitted by counsel for appellant-*Insurer* that compensation granted under the *non-pecuniary heads* needs to be brought in tune with Supreme Court’s Constitution Bench decision in *Pranay Sethi (Supra)*.

11. On the contrary, counsel for respondents-*Claimants* refutes the stand taken by counsel for appellant-*Insurer* and submits that the compensation granted by the Tribunal is just and fair and so, these appeals deserve to be dismissed.

12. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that on the negligence aspect,

appellant-Insurer has not got examined the driver of the insured vehicle. On perusal of site plan of the place of accident and evidence on record, I find that what to talk of negligence, even the contributory negligence is not established. The manner of taking place of the accident is quite apparent from perusal of the site plan of the place of accident. In the considered opinion of this Court, the Tribunal has rightly relied upon the plea of guilt taken by driver of insured vehicle before the criminal court, to hold that the driver of insured vehicle was grossly negligent in causing the accident in question.

13. On the aspect of quantum of compensation awarded by the Tribunal, this Court finds that in the case of deceased-*R.Anil*, the Tribunal has erred in making addition of 50% towards “*future prospects*” and in view of Supreme Court’s Constitution Bench decision in *Pranay Sethi (Supra)*, addition of 40% has to be made. Accordingly, the “*loss of dependency*” in the case of deceased -*R.Anil* is reassessed as under:-

$$₹7,254 \times 12 \times 16 \times \frac{3}{4} \times \frac{140}{100} = ₹14,62,406/-$$

14. So far as “*loss of dependency*” of legal heirs of deceased –*Raju Singh* assessed by the Tribunal is concerned, this Court finds that the deceased –*Raju Singh* was 40 years of age at the time of accident and the Tribunal has erred in making addition of 30% towards “*future prospects*”. In view of Supreme Court’s Constitution Bench decision in *Pranay Sethi (Supra)*, addition of 25% towards “*future prospects*” is to be made. Hence, the loss of dependency of legal heirs of deceased –*Raju Singh* is reassessed as under:-

$$₹13,000/- \times 12 \times \frac{125}{100} \times \frac{3}{4} \times 15 = ₹21,93,750/-$$

15. In the case of deceased-*Ramesh*, loss of dependency has been rightly calculated by the Tribunal.

16. The compensation granted by the Tribunal under the '*non pecuniary heads*', needs to be brought in tune with Supreme Court's decision in *Pranay Sethi (supra)*. Accordingly, compensation granted to legal heirs of deceased- *R.Anil, Raju Singh & Ramesh* by the Tribunal under the head of "*loss of love & affection*" is disallowed. The "*funeral expenses*" are reduced from ₹25,000/- to ₹15,000/- and compensation granted under the head "*loss of consortium*" is also reduced from ₹1,00,000/- to ₹40,000/-. However, the compensation granted under the head "*loss of estate*" is enhanced from ₹10,000/- to ₹15,000/-. Accordingly, the compensation payable to legal heir of deceased- *R.Anil, Raju Singh & Ramesh* is reassessed as under:-

| Name of deceased | Loss of dependency | Loss of estate | Funeral expenses | Consortium | Total compensation payable |
|------------------|--------------------|----------------|------------------|------------|----------------------------|
| R.Anil           | ₹14,62,406/-       | ₹15,000/-      | ₹15,000/-        | ₹40,000/-  | ₹15,32,406/-               |
| Raju Singh       | ₹21,93,750/-       | ₹15,000/-      | ₹15,000/-        | ₹40,000/-  | ₹22,63,750/-               |
| Ramesh           | ₹31,56,696/-       | ₹15,000/-      | ₹15,000/-        | ₹40,000/-  | ₹32,26,696/-               |

17. Consequentially, the compensation awarded to legal heirs of deceased-*R.Anil* by the Tribunal is reduced from ₹18,01,912/- to ₹15,32,406/- and compensation granted by the Tribunal to legal heirs of deceased-*Raju Singh* is also reduced from ₹25,16,500/- to ₹22,63,750/-. Similarly, compensation awarded by the Tribunal to legal heirs of

deceased –*Ramesh* is also reduced from ₹33,91,696/- to ₹32,26,696/- . The modified compensation shall carry interest @ 9% p.a. and it be released forthwith to respondents-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*.

18. With aforesaid directions, the above captioned three appeals and applications are accordingly disposed of.

**(SUNIL GAUR)**  
**JUDGE**

**AUGUST 28, 2018**

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