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

Date of Decision: May 10, 2018

\+   **MAC.APP. 900/2015 & CM 28177/2015**

NATIONAL INSURANCE COMPANY LTD ..... Appellant
Through: Mr. Rakhi Dubey, Advocate

versus

KAMLA DEVI & ORS .....Respondents
Through: Mr. Mohit Kukreja, Advocate for respondents-Claimants

\+   **MAC.APP. 876/2017**

KAMLA DEVI & ORS .....Appellants
Through: Mr. Mohit Kukreja, Advocate

versus

NATIONAL INSURANCE CO LTD & ORS .....Respondents
Through: Mr. Rakhi Dubey, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The subject matter of the above captioned two appeals is the Award of 5th October, 2015 vide which the Motor Accident Claims Tribunal, South East District, New Delhi *(hereinafter referred to as 'the Tribunal')* has granted compensation of ₹17,64,000/- with interest at 9% *per annum* to the Claimants on account of death of one *Bittu @ Yogesh* aged around 20 years in a vehicular accident on 15th January, 2010.

2. The facts emerging from impugned Award are as under: -

Brief facts of the case are that on 15.01.2010 at around 09.40am, an information was received vide DD no. 6A at police station that one Bittoo reported to have fallen down from a bus at bus stop Sheikh Sarai part-II on BRT corridor and admitted in AIIMS Trauma Centre by one Pradeep Kumar, thereafter ASI Nawab Khan rushed to AIIMS Trauma Centre and collected the MLC of the injured. Bittoo was reported to have died because of the accidental injuries which was suffered on 14.01.2010 at around 10.30AM. During investigation, Police recorded the statement of eye witness Kailash who stated that 14.01.2010 at around 10.30 am when he was crossing the BRT road for going to Pir Baba Dargarh he saw that offending bus bearing no. DL-1PA-7977 driven by respondent no. 1 in rash and negligent manner and he took sudden brakes due to which a boy aged around 19 years fell down from the bus and got struck with the grill. However after the accident, he left the spot and later on came to know that boy namely Bittoo @ Yogesh died at Trauma Centre because of the injuries suffered in the accident. Police during investigation on scrutiny of bill book of Azad Bus Body Builder found forgery regarding the entry of that bus on the date of accident that it was there in the workshop. On interrogation during investigation owner Bijendra told the police that vehicle was in custody of one Bittoo. Thereafter Bittoo and driver of the offending vehicle Vinod Kumar Yadav were interrogated who disclosed about their connivance to make forged entry in bill book to save the bus and themselves from this accident.

3. The Tribunal has relied upon the evidence of deceased's mother-*Kamla Devi (PW-1)*, eye-witness-*Kailash (PW-2), Bijender Singh (R1W1)*, owner of the bus in question, and Insurer's Development Officer

(R3W1) to render impugned Award. The Tribunal has assessed the income of deceased while relying upon Salary Certificate of 6th July, 2013 *(Ex.PW1/2)*, which discloses the salary of deceased as ₹9,500/- per month. Since deceased was unmarried, therefore, 50% of his income has been deducted towards his *'personal expenses'* and addition of 50% has been made towards *'future prospects'*. Thus, *'loss of dependency'* has been assessed by the Tribunal at ₹15,39,000/-. Compensation of ₹1,50,000/- towards *'loss of love and affection'* and ₹50,000/- towards *'loss of estate'* has been granted by the Tribunal whereas a sum of ₹25,000/- has been granted by the Tribunal towards *'funeral expenses'*. The break-up of the compensation granted by the Tribunal is as under: -

1.	*Loss of Dependency*	*Rs. 15,39,000/-*
2.	*Funeral Expenses*	*Rs. 25,000/-*
3.	*Loss of Love & Affection*	*Rs. 1,50,000/-*
4.	*Loss of Estate*	*Rs. 50,000/-*
	Total	***Rs. 17,64,000/-***

4. The above-captioned first appeal is by the Insurer whereas the above-captioned second appeal is by the Claimants. With the consent of learned counsel for the parties, these appeals have been heard together and are being disposed of by this common judgment.

5. Learned counsel for the Insurer submits that the involvement of offending vehicle in question i.e. the Insured bus, is doubtful, as when the police had reached the place of accident, no eye-witness was found there and the FIR was lodged against unknown persons. It is pointed out by Insurer's counsel that the DAR is silent about this accident being witnessed by anyone. It is submitted that the evidence of alleged eye-

witness has been recorded after five months of the accident and so, the Tribunal has erred in relying upon it.

6. It is the submission of Insurer's counsel that the income of deceased ought to have been assessed on minimum wages while putting deceased in the category of an unskilled labour. Reliance is placed upon Supreme Court's Constitution Bench decision in *National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680 to submit that since deceased was self-employed, therefore, addition towards *'future prospects'* ought to be 40% and not 50%. It is next submitted by Insurer's counsel that compensation granted under the Non-Pecuniary heads is on higher side and it needs to be suitably reduced in view of Supreme Court's decision in *Pranay Sethi (supra).*

7. On the contrary, learned counsel for Claimants submits that the accident in question took place due to negligence of the offending vehicle and the quantum of compensation granted by the Tribunal is on the lower side and it needs to be suitably enhanced. It is submitted by Claimants' counsel that the deduction towards *'personal expenses'* ought to be 1/3rd and not 50% because family of deceased included widowed mother and two unmarried sisters, who were dependent upon deceased. Nothing else is urged on behalf of either side.

8. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that the name of eye-witness-*Kailash* finds mention in the FIR registered regarding the accident in question and it remains unchallenged that at the instance of eye-witness-*Kailash*, the site plan of the spot was prepared by Police. In such a situation, I find no justification to doubt the evidence of eye-witness-*Kailash*. Upon scrutiny

of the evidence of eye-witness-*Kailash* in light of site plan of the spot, I find that the Tribunal has rightly concluded that the accident in question had taken place due to the rash and negligent driving of the driver of Insured bus.

9. As per Salary Certificate *(Ex. PW1/2)*, deceased was working in a Salon engaged in hairstyling and colouring and was drawing salary of ₹9,500/- per month. The Salary Certificate in question has been duly proved by mother of deceased. I find no reason to discard the aforesaid Salary Certificate and to assess the salary of deceased on minimum wages as a Barber cannot be said to be an unskilled person.

10. So far as enhancement of compensation is concerned, I find that deduction towards *'personal expenses'* in a case of bachelor has to be 50% as per Supreme Court's decision in *Sarla Verma v. DTC,* (2009) 6 SCC 121, as the evidence regarding family of deceased being large one and being dependent upon deceased, is lacking. So, no case for enhancement of compensation is made out.

11. In view of Supreme Court's decision in *Pranay Sethi (supra)*, addition towards *'future prospects'* has to be 40% and not 50%, as the deceased was working on fixed salary. In light of aforesaid, *'loss of dependency'* is re-assessed at ₹14,36,400/- (₹9,500/- + 3,800 (40%) X 12 X ½ X 18).

12. So far as compensation granted by the Tribunal under the Non-pecuniary heads is concerned, I find that in view of Supreme Court's decision in *Pranay Sethi (supra)*, it needs to be brought in tune with compensation granted under these heads in the said decision. In view thereof, compensation granted under the head of *'loss of love and*

affection' is disallowed and compensation under the head of *'loss of estate'* is reduced from ₹50,000/- to ₹15,000/- whereas *'funeral expenses'* are also reduced from ₹25,000/- to ₹15,000/-. Thus, the total compensation payable to Claimants is reassessed as under: -

1.	*Loss of Dependency*	*₹14,36,400/-*
2.	*Funeral Expenses*	*₹15,000/-*
3.	*Loss of Estate*	*₹15,000/-*
	Total	***₹14,66,400/-***

13. In light of the aforesaid, the quantum of compensation granted to the Claimants is reduced from ₹17,64,000/- to ₹14,66,400/-, which shall carry interest @ 9% *per annum.* The reassessed compensation of ₹14,66,400/- be released forthwith to the Claimants in the manner and ratio as indicated in impugned Award and the excess amount deposited alongwith statutory deposit be refunded to Insurer.

14. These appeals and the pending application are disposed of in the aforesaid terms.

(SUNIL GAUR)
JUDGE

MAY 10, 2018
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