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

% ***Reserved on: 01.11.2022***
Pronounced on: 04 .11.2022

\+ **MAC. APP. 77/2013**

THE NEW INDIA ASSURANCE CO. LTD. ...Appellant
Through: Mr. Pankaj Seth, Advocate

versus

LOKESH GUPTA & ORS. ...Respondents
Through: Mr. Vimal Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The present appeal has been preferred by the Appellant under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 20.11.2012 ("**impugned award**") passed by the Court of learned Presiding Officer, Motor Accident Claims Tribunal, East District, Delhi.
2. By way of the impugned Award dated 20.11.2012 the learned Claims Tribunal awarded a compensation of Rs. 6,31,800/- with interest @ 7.5% per annum from the date of filing of the claim petition till realization of the amount and directed the Insurance Company to deposit the entire awarded amount within a period of one month.

SUBMISSION OF THE APPELLANT

3. Mr. Pankaj Seth, learned counsel for the Appellant/Insurance Company limited his argument and contended that in terms of dicta of ***Hon'ble Supreme Court in National Insurance Co. Ltd Vs Pranay Sethi & Ors*** reported as ***(2017) 16 SCC 680,*** compensation under the head '*Future Prospects*' is to be paid by adding 40% of the assessed income of the claimant instead of 50% as awarded by the learned Claims Tribunal.

SUBMISSION OF THE RESPONDENT

4. Mr. Vimal Kumar, Advocate, learned counsel appearing on behalf of Respondent/Claimant contended that the appeal is liable to be dismissed and no interference in the impugned order is called for by this Court.

COURT'S REASONING

5. The arguments raised by the learned counsel for the parties are purely legal and based on the law settled by the Hon'ble Apex Court in the case of ***Pranay Sethi (Supra).*** In terms of ***Pranay Sethi (Supra)***, an addition of 40% of the established income of the respondent/claimant should be granted under the head '*Future Prospects*' as the respondent/claimant was of the age of 35 years at the time of the alleged incident. The Hon'ble Apex Court in the case of ***Pranay Sethi (Supra)*** with regard to grant of compensation under the head '*Future Prospects*' has held as under:-

> "*….The degree-test has to have the inbuilt concept of percentage. Taking into consideration the cumulative factors, namely, passage of time, the changing society, escalation of price, the change in*

price index, the human attitude to follow a particular pattern of life, etc., ***an addition of 40% of the established income of the deceased towards future prospects and where the deceased was below 40 years an addition of 25% where the deceased was between the age of 40 to 50 years would be reasonable.***

60. The controversy does not end here. The question still remains whether there should be no addition where the age of the deceased is more than 50 years. Sarla Verma thinks it appropriate not to add any amount and the same has been approved in Reshma Kumari. Judicial notice can be taken of the fact that salary does not remain the same. When a person is in a permanent job, there is always an enhancement due to one reason or the other. To lay down as a thumb Rule that there will be no addition after 50 years will be an unacceptable concept. We are disposed to think, there should be an addition of 15% if the deceased is between the age of 50 to 60 years and there should be no addition thereafter. Similarly, in case of self-employed or person on fixed salary, the addition should be 10% between the age of 50 to 60 years. The aforesaid yardstick has been fixed so that there can be consistency in the approach by the tribunals and the courts."

(emphasis supplied)

6. In view of the above discussion the impugned Award dated 20.11.2012 is modified to limited extent i.e. compensation under the head '*Future Loss of Income*' shall be computed as under:-
   1. Rs. 18,000/- (monthly income) + 40% (Rs. 7,200/-) = Rs. 25,200/-
   2. Rs. 25,200 X 12 X 16 X 19/200 = **Rs. 4,59,648/-.**
7. Accordingly, the compensation granted by the learned Claims Tribunal is reduced/modified as under:-

S. No.	On account of	Amount (Rs.)
1.	Towards medical expenses	Rs. 5,320/-
2.	Towards future loss of income	**Rs. 4,59,648/-**

3.	Towards three months salary	Rs. 54,000/-
4.	Towards better diet	Rs. 10,000/-
5.	Towards conveyance	Rs. 10,000/-
6.	Towards attendant	Rs. 10,000/-
7.	Towards pain and suffering	Rs. 50,000/-
	Total	**Rs. 5,98,968/-**

8. As per the office report, proof of deposit of decretal amount in terms of order dated 28.01.2013 has not been filed by the Appellant till date. The Appellant is directed to deposit the entire compensation amount, as mentioned above, with the Registrar General of this Court within a period of four weeks. If the amount is already deposited by the Appellant/Insurance Company, the differential amount with upto date interest be released to the Appellant/Insurance Company and the balance amount of **Rs. 5,98,968/-** alongwith up-to-date interest be released to the respondent/claimant within a period of two weeks in terms of impugned award dated 20.11.2012 passed by the learned Claims Tribunal. The statutory amount may be released to the appellant/insurance company.
9. With the above directions, appeal stands allowed. No order as to costs.

GAURANG KANTH
(JUDGE)

NOVEMBER 04, 2022