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* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 10.11.2023*+ **MAC.APP. 92/2016 & CM APPL. 41416/2023**
THE NEW INDIA ASSURANCE CO LTD

..... Appellant

Through: Mr.JPN Shahi, Adv.

versus

ARCHNA DEO & ORS

..... Respondents

Through: Mr.Vijay Pal Singh &
Mr.Yogesh Kumar, Advs. for
R-1 to 5.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****NAVIN CHAWLA, J. (ORAL)**

1. This appeal has been filed challenging the Award dated 08.10.2015 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accident Claims Tribunal, Dwarka Courts, New Delhi (hereinafter referred to as the 'Tribunal') in MACP No. 60/14/12 titled *Smt. Archna Deo & Ors. v. Panna Lal & Ors.*, and the Order Dated 19.11.2015 correcting some typographical errors in the said Award.

2. Before the learned Tribunal, it was the case of the claimants, that is the respondent nos.1 to 5 herein, that on 13/14.10.2012, the deceased was coming back to Delhi from



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Punjab along with Sh. Harish Kumar, Baljinder Singh, and Tufan Singh in an Innova Car bearing registration no. DL-4CAE-8650, which was being driven by the deceased himself. As the car reached at Jhattipur, Police Station Samalkha (Haryana) near Lepra Harbal Factory, a Canter bearing registration no. HR-58-1237 (hereinafter referred to as the 'Offending Vehicle'), being driven by the respondent no.6 herein, Sh.Panna Lal, came from behind at a very high speed and in a rash and negligent manner and overtook the car of the deceased. All of a sudden it stopped in front of the car of the deceased without giving any indication, due to which the car hit the Offending Vehicle from behind and the deceased suffered fatal injuries.

3. The learned Tribunal, in its Impugned Award, has held that the respondent nos.1 to 5 have been able to prove that the accident had occurred due to the Offending Vehicle being driven in a rash and negligent manner. As per the corrected Award, it has awarded the following compensation in favour of respondent nos.1 to 5:-

S.No.	HEAD	AMOUNT
1	Loss of dependence (Rs.6,86,401x14)	Rs.96,09,614/-
2	Loss of love and affection to children (1,00,000x3)	Rs.3,00,000/-
3	Loss of Love and affection towards Parent 50,000x1	Rs.50,000/-



4	<i>For funeral expenses</i>	<i>Rs.25,000/-</i>
5	<i>Loss of estate</i>	<i>Rs.1,00,000/-</i>
6	<i>Loss of consortium</i>	<i>Rs.1,00,000/-</i>
	<i>TOTAL</i>	<i>Rs.1,01,84,614/-</i>

CONTRIBUTORY NEGLIGENCE

4. The learned counsel for the appellant challenges the Impugned Award by contending that the learned Tribunal has failed to appreciate that the deceased had also contributed to the accident. He submits that, in fact, it was the deceased who overtook the Offending Vehicle, driving his car in a rash and negligent manner.

5. The learned counsel for the appellant, however, fairly admits that the driver of the Offending Vehicle, that is, the respondent no.6 herein, did not enter the witness box to explain the manner of the accident.

6. On the other hand, the claimants, that is the respondent nos.1 to 5 herein, produced Sh.Krishan Kumar as PW-1, who was also travelling in the car along with the deceased, and who stated that it was the Offending Vehicle that overtook the Innova car at a high speed and immediately thereafter applied sudden brakes resulting in the accident. The said witness was not cross-examined by the driver or the owner of the Offending Vehicle, but was cross-examined only by the learned counsel for the appellant. In his cross-examination, he denied the suggestion that the accident had taken place due to the



negligence of the deceased.

7. In the absence of any evidence to the contrary, therefore, the finding of the learned Tribunal that the accident had taken place only due to the Offending Vehicle being driven in a rash and negligent manner by the respondent no.6 herein, cannot be faulted. I, therefore, find no merit in the challenge raised by the appellant to the Impugned Award on this account. Accordingly, the same is rejected.

INCOME OF THE DECEASED

8. The next challenge of the appellant to the Impugned Award is on the assessment of the Income of the deceased. The learned counsel for the appellant, drawing reference of this Court to the Income Tax Return (in short, 'ITR') of the deceased for the assessment year 2012-13 (Ex.PW-2/1), submits that the said return shows the gross income of the deceased as Rs.7,04,001/-. On the above income, the deceased was to pay tax of Rs.52,001/-. The learned counsel for the appellant submits that the learned Tribunal has erred in not deducting the Income Tax amount from the income of the deceased.

9. The learned counsel for the respondent nos.1 to 5 submits that, in fact, an amount of Rs.64,231/- had been deducted from the income of the deceased as Tax Deducted at Source (in short, 'TDS'). He submits that, in fact, there was a refund of Rs.12,230/-, which was due to the deceased towards his tax liability.

10. I have considered the submissions made.



11. The Supreme Court, in *National Insurance Company Limited v. Pranay Sethi and Others*, (2017) 16 SCC 680, has held that the 'established income' means the 'income minus the tax component'. In the present case, from the ITR of the deceased, it is apparent that on the gross income of Rs.7,04,001/-, the deceased was to pay a total tax liability of Rs.52,001/-. It may be paid in the form of TDS or in the form of an actual deposit later, however, it has to be deducted from the income of the deceased.

12. Accordingly, the Impugned Award, insofar as it determines the income of the deceased as Rs.7,04,001/-, shall stand modified and the income of the deceased is re-assessed as under:-

$$\text{Rs.7,04,001/-} - \text{Rs.52,001/-} = \text{Rs.6,52,000/-}$$

13. On the basis thereof, the compensation for loss of dependency shall have to be recalculated and shall stand modified.

14. The learned counsel for the appellant submits that, in fact, there was no loss of income suffered by respondent nos.1 to 5 due to the death of the deceased in the accident. Placing reliance on the testimony of the statement of Sh. N.K. Jain, Chartered Accountant (PW-3), he submits that the said witness had admitted that the business of the deceased has continued in the same manner even after his death.

15. I find no merit in the above submission of the learned counsel for the appellant.



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16. From the testimony of the respondent no.1 (PW-2), wife of the deceased, it became apparent that the deceased was a Director in a Company namely VHK Hospitality Solutions (P) Ltd. He was also running a sole proprietorship under the name and style of Vista Hospitality Koncepts. The learned Tribunal has taken the income of the deceased only from his sole proprietorship and his individual income and not the income of the Company for determining the loss of dependency. Even though the Company may have continued to do business even after the death of the deceased, it would have no effect on the claim of the respondent nos.1 to 5 for compensation towards loss of dependency. The above challenge is, therefore, rejected.

FUTURE PROSPECTS

17. The next challenge of the appellant to the Impugned Award is on the submission that the learned Tribunal has erred in granting future prospects of increase of income of the deceased as 30%. The learned counsel for the appellant submits that the deceased was aged around 43 years at the time of the accident. Admittedly, he was self-employed and doing business. Placing reliance on the judgment of the Supreme Court in *Pranay Sethi and Others* (Supra), the learned counsel for the appellant submits that, therefore, future prospects should have been taken at 25%.

18. The above submission is not disputed by the learned counsel for respondent nos.1 to 5.

19. In *Pranay Sethi and Others* (Supra), it has been *inter*



alia held as under:-

“59.4. In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.”

(emphasis supplied)

20. As the deceased was aged around 43 years and was earning a livelihood through his own business, future prospects at the rate of 25% only could have been granted by the learned Tribunal.

21. Accordingly, the Impugned Award shall stand modified to this effect.

NON-PECUNIARY HEADS

22. The next challenge of the appellant to the Impugned Award is on the compensation granted towards non pecuniary heads. The learned counsel for the appellant, again relying upon the judgment of the Supreme Court in ***Pranay Sethi and Others*** (Supra), submits that the learned Tribunal has erred in awarding compensation to the respondent nos.1 to 5 on the heads of ‘loss of love and affection towards children’, ‘loss of love and affection towards parents’, and has excessively granted compensation towards ‘loss of funeral expenses’, ‘loss of estate’ and ‘loss of consortium’.



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23. I find merit in the submission made.

24. In terms of the judgment of the Supreme Court in *Pranay Sethi and Others* (Supra), and as explained by *United India Insurance Company Limited v. Satinder Kaur alias Satwinder Kaur and Others*, (2021) 11 SCC 780, the claimants, that is, the respondent nos.1 to 5 are entitled to compensation towards non pecuniary heads under:-

<u>S.No.</u>	<u>Particulars</u>	<u>Amounts</u>
1.	Funeral Expenses	Rs.15,000/-
2.	Loss of Estate	Rs.15,000/-
3.	Loss of Consortium	Rs.40,000x5= Rs.2,00,000/-
	Total	<u>Rs.2,30,000/-</u>

25. Accordingly, the Impugned Award shall stand modified to the above extent.

RATE OF INTEREST

26. The last challenge of the appellant to the Impugned Award is on the rate of interest awarded by the learned Tribunal. The learned counsel for the appellant submits that the learned Tribunal has erred in awarding interest at the rate of 9% per annum. He submits that keeping in view the prevalent rates, it should be only 7.5% per annum.

27. I find no merit in the above submission.

28. The learned Tribunal has awarded a reasonable rate of



interest to the respondent nos.1 to 5, keeping in view the fact that the date of the accident was 14.10.2012 while the Award was passed only on 08.10.2015. The challenge is accordingly rejected.

CONCLUSION AND DIRECTIONS

29. In view of the above, the compensation awarded in favour of the respondent nos.1 to 5 is re-determined as:-

S.No.	Particulars	Trial Court	High Court
1.	Loss of Dependency	Rs.7,04,001x130/100 x3/4x14 = Rs.96,09,614/-	Rs.6,52,000x125/100 x3/4x14 =Rs.85,57,500/-
2.	Non Pecuniary Heads	Rs.5,75,000	Rs.2,30,000/-
3.	Total Compensation	Rs.1,01,84,614/-	Rs.87,87,500/-
4.	<u>Excess Amount</u>		<u>Rs.13,97,114/-</u>

30. The re-determined amount of compensation, that is, Rs.87,87,500/-, shall carry interest at the rate of 9% and for the period as was awarded by the learned Tribunal in the Impugned Award.

31. This Court, by its *interim* order dated 01.02.2016, had directed that, on the appellant depositing the entire awarded amount with up to date interest with the Tribunal within 30 days of the said order, the Tribunal shall release 50% of the awarded amount to the claimants, that is, the respondent nos.1 to 5 herein in terms of the directions in the Impugned Award while the



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balance shall be kept in an interest bearing account.

32. As the compensation amount has now been modified, the excess amount deposited by the appellant shall now be released in favour of the appellant along with the proportionate interest accrued thereon.

33. Respondent no.2 has filed an application being CM APP No.41416/2023 praying for a direction to release the pending compensation amount in her favour. In the application, it is stated that in terms of the *interim* order passed by the learned Tribunal, a sum of Rs.12,00,000/- out of the compensation amount of Rs.20,00,000/- already stands released in favour of respondent no.2. It is further stated that the respondent no.2 is now aged about 27 years and her marriage is fixed on 09.12.2023. It is stated that, therefore, the respondent no.2 is in urgent need of funds.

34. In view of the above, it is directed that as far as the respondent no.2 is concerned, the entire balance compensation amount falling in the share of respondent no.2 in terms of the Impugned Award, as modified by the present judgement, shall be released along with interest accrued thereon to the respondent no. 2 in a lump-sum.

35. As far as respondent nos.1 and 3 to 5 are concerned, the compensation amount as modified in the present judgment shall continue to be disbursed in their favour in accordance with the schedule of disbursement that has been prescribed in the Impugned Award.



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36. The statutory amount deposited by the appellant shall be released in favour of the appellant along with interest accrued thereon.

37. The appeal and the pending application are disposed of in the above terms.

NAVIN CHAWLA, J

NOVEMBER 10, 2023/rv/ss