



2023:DHC:8394



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

Date of decision: 21.11.2023

+ **MAC.APP. 716/2016 & CM APPL. 39306/2021**
NATIONAL INSURANCE CO LTD Appellant
Through: Mr. Pradeep Gaur & Ms. Sweta
Sinha, Advocates (Through
VC)
versus

RAJVIR & ORS Respondents
Through: Mr. G.D. Mishra, Advocate.

+ **MAC.APP. 717/2016 & CM APPL. 39302/2021**
NATIONAL INSURANCE CO LTD Appellant
Through: Mr. Pradeep Gaur & Ms. Sweta
Sinha, Advocates (Through
VC)
versus

RAJVIR & ORS Respondents
Through: Mr. G.D. Mishra, Advocate.

+ **MAC.APP. 718/2016 & CM APPL. 39161/2021**
NATIONAL INSURANCE CO LTD Appellant
Through: Mr. Pradeep Gaur & Ms. Sweta
Sinha, Advocates (Through
VC)
versus

RAJVIR & ORS Respondents
Through: Mr. G.D. Mishra, Advocate.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

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NAVIN CHAWLA, J. (ORAL)

1. These appeals have been filed challenging the common Award dated 02.07.2016 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accident Claims Tribunal-01, Dwarka Courts, New Delhi (hereinafter referred to as the 'Tribunal') in MACP No. 255/2012, titled as ***Rajvir vs Ranjeet Kumar & Ors.*** (MAC. APPL. 716/2016); MACP No. 257/2012, titled as ***Rajvir & Ors. vs. Rajneet Kumar & Ors.*** (MAC. APPL. 717/2016); and MACP No. 256/2012, titled as ***Rajvir & Anr. vs. Ranjeet Kumar & Ors.*** (MAC. APPL. 718/2016).

2. As all the three claim petitions and the appeals arise out of same accident, and the challenge of the appellant is also almost similar in all the three appeals, they are being considered and decided by this common judgment.

3. It was the case of the claimants before the learned Tribunal that on 29.07.2012, the deceased Sh. Nand Lal, Smt. Vidya Devi and Smt. Yogesh were coming from Agra towards Delhi in a car bearing registration No. DL-9CS-0626, which was being driven by Shri Rajvir. As they reached at Agra - Mathura Border, near Gwalior Dhaba, the Offending Vehicle, being a Truck bearing registration no. HR-38N-7293, driven by its driver in a rash and negligent manner, hit the aforesaid car, resulting in the death of Sh. Nand Lal, Smt. Vidya Devi, and Smt. Yogesh, while Rajvir received serious injuries.

4. I must herein note that no appeal has been filed with



respect to the compensation granted by way of the Impugned Award for the injuries suffered by Mr. Rajvir.

LOSS OF DEPENDENCY

MAC.APP. 716/2016

5. The learned counsel for the appellant submits that Sh. Nand Lal, on the date of the accident, was aged around 80 years. Though he was drawing pension, the claimants, that is, his sons, cannot be said to be financially dependant upon him. He submits that, in fact, there was no evidence on record which could establish the claimants to be financially dependant on their father Sh. Nand Lal.

6. Though the learned counsel for the respondent does not dispute the above position of lack of evidence, he submits that deceased Sh. Nand Lal was looking after his grandchildren and, therefore, it has to be presumed that he was also supporting the family and resultantly, the claimants were entitled to compensation towards loss of dependency.

7. He submits that Sh. Nand Lal was also working as an agriculturist and, therefore, the claimants would be entitled to compensation towards loss of dependency. He, however, fairly admits that there was no evidence on record before the learned Tribunal to show that the deceased Sh. Nand Lal was working as an agriculturist or having any income therefrom.

8. In view of there being no evidence, as far as the plea of the respondents/claimants that Sh. Nand Lal was working as an agriculturist, cannot be accepted. The only income of the



deceased-Sh. Nand Lal was, therefore, in the form of his pension.

9. The claimants are the sons of Sh. Nand Lal. They were major at the time of the accident and there was no evidence on record to show that they were financially dependant on their father. In terms of the judgment of the Supreme Court in *Sarla Verma & Ors. vs Delhi Metro Corporation and Anr.*, 2009 (6) SCC 121, the claimants cannot be said to be financially dependant on their father. They would not be entitled to any compensation towards loss of dependency. In fact, on the contrary, the deceased must have been dependant upon the Claimants.

10. The award of compensation to the claimants towards 'loss of dependency' is, therefore, set aside.

MAC.APP. 718/2016

11. In MAC. APP. 718/2016, similar submissions are being made for the compensation awarded towards the death of the deceased-Late Smt. Vidya, mother of the claimants.

12. It is admitted that she was aged around 70 years at the time of the accident, and was not having any source of income. In fact, for the said reason alone, she would have been financially dependant on the claimants rather than the other way round.

13. In my view, therefore, compensation towards loss of dependency was wrongly awarded by the learned Tribunal to the claimants, and the Impugned Award to this extent is set



aside.

MAC.APP. 717/2016

Future Prospects:

14. As far as MAC. APP. 717/2016 is concerned, the same relates to the deceased-Late Smt. Yogesh Yadav, who was 47 years old at the time of the accident. She was working as a teacher.

15. The learned counsel for the appellant submits that keeping in view the judgment of the Supreme Court in *National Insurance Company Limited v. Pranay Sethi and Others*, (2017) 16 SCC 680, future prospects at the rate of 30% should have been considered by the learned Tribunal. He submits that the learned Tribunal has erred in determining the compensation payable to the claimants by taking the future prospects at the rate of 50%.

16. I find merit in the submission made.

17. In *Pranay Sethi and Others* (Supra), the Supreme Court has held as under:-

“59.3. While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

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.”

18. In view of the above, future prospects at the rate of 30% should have been considered by the learned Tribunal while awarding compensation to the claimants.

19. It is ordered accordingly. The Impugned Award shall stand modified accordingly.

Income tax not deducted:

20. The learned counsel for the appellant submits that the learned Tribunal has erred in not deducting the Income Tax payable from the income of the deceased.

21. I find merit in the above challenge of the appellant.

22. As held by the Supreme Court in ***Pranay Sethi and Others*** (Supra), the ‘Established Income’ means the Income minus the Tax component.

23. In the present case, the deceased was drawing gross monthly salary of Rs. 42,506/-. The learned Tribunal should have deducted the Income Tax payable on the said amount for purposes of determining the loss of dependency. On the above amount, I am informed that the deceased would be paying approximately Rs.32,974/- towards Tax. The same should have been deducted by the learned Tribunal.



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24. Accordingly, compensation towards 'loss of dependency' is re-determined as under:-

<u>S.No.</u>	<u>Particulars</u>	<u>Amount</u>
1.	Income (Yearly Income – Tax liability) = (5,10,072 – 32,974)	Rs.4,77,098/-
2.	Loss of Dependency (4,77,098x130/100x2/3x13)	Rs.53,75,304.13/-

NON-PECUNIARY HEADS

25. The next challenge of the appellant to the Impugned Award is on the compensation awarded towards non-pecuniary heads. The learned counsel for the appellant, placing reliance on the judgment of the Supreme Court in *Pranay Sethi* (Supra), submits that the claimants are entitled to compensation of only Rs.40,000/- towards loss of consortium; Rs.15,000/- towards funeral expenses; and, Rs.15,000/- towards loss of estate. He submits that the learned Tribunal has erred in awarding compensation on a higher amount, and in MAC. APP. 717/2012 also awarding compensation on the head of loss of love and affection.

26. I find merit in the above.

27. As held by the Supreme Court in *Pranay Sethi* (Supra), and later clarified in *United India Insurance Company Limited v. Satinder Kaur alias Satwinder Kaur and Others*, (2021) 11 SCC 780, the claimants are entitled to only the following compensation towards non-pecuniary heads:-

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**MAC. APP. 716/2016 (deceased late Shri Nand Lal)**

<u>S.No.</u>	<u>Particulars</u>	<u>Amount</u>
1.	Loss of Consortium (Rs.40,000x2)	Rs.80,000/-
2.	Loss of Estate	Rs.15,000/-
3.	Funeral Expenses	Rs.15,000/-
	Totals	<u>Rs.1,10,000/-</u>

MAC. APP. 717/2016 (deceased late Smt. Yogesh Yadav)

<u>S.No.</u>	<u>Particulars</u>	<u>Amount</u>
1.	Loss of Consortium (Rs.40,000x3)	Rs.1,20,000/-
2.	Loss of Estate	Rs.15,000/-
3.	Funeral Expenses	Rs.15,000/-
	Totals	<u>Rs.1,50,000/-</u>

MAC. APP. 718/2016 (deceased lat Smt. Vidya)

<u>S.No.</u>	<u>Particulars</u>	<u>Amount</u>
1.	Loss of Consortium (Rs.40,000x2)	Rs.80,000/-
2.	Loss of Estate	Rs.15,000/-
3.	Funeral Expenses	Rs.15,000/-
	Totals	<u>Rs.1,10,000/-</u>

INTEREST

28. The last challenge of the appellant is to the rate of interest awarded by the learned Tribunal on the compensation awarded. The learned Tribunal has directed the appellant to pay the



compensation amount along with interest at the rate of 10% per annum from the date of filing of the Claim Petitions, that is, 20.11.2012, till the date of deposit.

29. The learned counsel for the appellant submits that the rate of interest prevalent around the date of the accident was 9% per annum, however, there is no material placed on record in support of the above assertion.

30. In any case, and even accepting the above submission of the appellant, the rate of interest awarded by the learned Tribunal cannot be said to be excessive or as warranting any interference from this Court. Accordingly, this challenge is rejected.

CONCLUSION & DIRECTIONS

31. In view of the above, the Impugned Awards passed by the learned Tribunal shall stand modified. The claimants shall be entitled to compensation as determined in paragraph 24 and 27 hereinabove, along with interest at the rate of 10% per annum from the date of filing of the Claim Petition till the deposit of the awarded amount with the learned Tribunal.

32. By the order dated 02.09.2016 passed in MAC. APP. 716/2016, it was directed that subject to the appellant depositing a sum of Rs.3,00,000/- with the learned Tribunal, the operation of the Impugned Awards shall remain stayed. In MAC. APP. 717/2016, vide Order dated 02.09.2016, the operation of the Impugned Award was directed to be stayed by this Court subject to the appellant depositing a sum of Rs.50,00,000/- with



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the learned Tribunal.

33. In MAC. APP. 718/2016, this Court, by its order dated 02.09.2016, had directed stay of the operation of the Impugned Award subject to deposit of Rs.3,00,000/- by the appellant with the learned Tribunal.

34. In case the amount deposited by the appellant pursuant to the above orders is lesser than the sum awarded by the present judgment, the appellant shall deposit the balance amount along with interest with the learned Tribunal within a period of six weeks from today, along with its calculations. In case the amount already deposited is in excess, the same shall be released to the appellant along with proportionate interest accrued thereon.

35. As the accident had occurred on 29.07.2012, and more than ten years therefrom have already passed, the compensation amount, along with interest, as determined by this court in the present judgment, shall be released to the claimants by the learned Tribunal as a lump sum.

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

37. The appeals along with pending applications are disposed of in the above terms.

NAVIN CHAWLA, J

NOVEMBER 21, 2023/SA/SS

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