

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

Date of Decision: July 31, 2018

+ **MAC.APP. 772/2015 & C.Ms. 22910/2015, 13773/2017 & 24431/2017**

THE NEW INDIA ASSURANCE CO LTDAppellant

Through: Mr. J.P.N. Shahi, Advocate

Versus

NISHA KAPOOR & ORS.Respondents

Through: Mr. Anshuman Bal, Advocate

+ **MAC.APP. 919/2015**

NISHA KAPOOR & ORSAppellants

Through: Mr. Anshuman Bal, Advocate

Versus

NEW INDIA ASSURANCE CO LTD & ORS. Respondent

Through: Mr. J.P.N. Shahi, Advocate

+ **MAC.APP. 36/2016 & C.M. 1499/2016**

THE NEW INDIA ASSURANCE CO LTDAppellant

Through: Mr. J.P.N. Shahi, Advocate

Versus

NIKHIL KUMAR SHARMA & ORS.Respondents

Through: Mr. Anshuman Bal, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned first two appeals arise out of impugned Award of 31st July, 2015, vide which the Motor Accident Claims Tribunal (*henceforth referred to as the "Tribunal"*) has awarded compensation of ₹67,10,874/- with interest @12% p.a. to Claimants on account of death of a Project Manager-*Prajwal Aditya*, aged 27½ years, in a vehicular accident which took place on 16th March, 2013.
2. In this unfortunate accident in question, a Team Leader-*Nikhil Kumar Sharma*, in *M/s Chaturbhawe Electronic Business Solutions Pvt. Ltd.*, was grievously injured and the Tribunal vide separate Award of 3rd December, 2015 has granted compensation of ₹1,41,506/- with interest @12% p.a. to him, which is under challenge in the above captioned third appeal.
3. In the above captioned first appeal, Insurer seeks modification of the impugned Award on the ground of composite negligence and seeks reduction in the quantum of compensation and the rate of interest granted. In the above captioned second appeal, enhancement of compensation is sought by the Claimants/ legal heirs of deceased-*Prajwal Aditya*. In the above captioned third appeal, exoneration is sought by Insurer on the ground that negligence was of injured-*Nikhil Kumar Sharma*. In the

alternative, reduction in the quantum of compensation and the rate of interest granted by the Tribunal is sought.

4. Since these three appeals arise out of one vehicular accident, 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. The factual background of this case, as noticed in the impugned Award, is as under:-

“1.The petitioners have filed a petition u/s 140 and 166 MV Act with the averments that the petitioners are wife, mother and daughter of deceased Prajjwal Aditya. All of them are his legal heirs. On 16.03.2013 at 12.40 a.m. the deceased along with Nikhil Sharma and others was going in a car bearing registration no. UP-16AC-2656 being driven by PW-3 Nikhil Kumar. They reached in front of Fortis Hospital, Sector-63 Noida, UP where a truck bearing registration no. RJ-02-GA-1869 being driven by respondent no.1 came in a high speed and in a rash and negligent manner and hit against the car as a result the deceased sustained injuries and succumbed to the injuries at the spot. The other occupants also sustained injuries. FIR no. 1303/2013/case no. 366/2013 u/S 279/338/304A IPC was registered at Police Station, Sector-58, Noida, U.P.

2. The deceased was 27 years of age at the time of accident who was earning Rs.54367/- per month. The deceased used to contribute the entire income to the family. They have suffered great pain, agony, mental torture and shock due to the death of deceased. They

have lost love and affection of deceased which cannot be compensated in terms of money. They have claimed compensation of Rs.2 crores from the respondents with interest @ 18% p.a. from the date of filing of petition till its realization.”

6. To render the impugned Award, the Tribunal has relied upon evidence of Claimants/ legal heirs of deceased and other documentary evidence on record. On the strength of evidence recorded, impugned Award has been rendered.

7. The breakup of compensation awarded by the Tribunal to legal heirs of deceased –*Prajwal Aditya* is as under:-

1	Loss of dependency	₹60,60,874/-
2	Loss of consortium	₹1,00,000/-
3	Loss of Love & Affection	₹3,00,000/- (₹1 lac for each petitioner)
4	Loss of estate	₹1,00,000/-
5	Los of expectancy of life	₹1,00,000/-
6	Funeral and transportation expenses	₹50,000/-
	Total	₹67,10,874/-

8. The breakup of compensation awarded by the Tribunal to Injured-*Nikhil Kumar Sharma* is as under:-

1.	Towards Pain and Sufferings	₹50,000/-
2.	Towards Servant /Attendant charges	₹5,000/-
3.	Towards Conveyance and Special Diet	₹6,000/-
4.	Towards Medical Bills	₹22,000/-
5.	Towards Loss of Wages	₹58,506/-
	Total	₹1,41,506/-

9. The challenge to the impugned Awards by learned counsel for Insurer is on the ground that the Tribunal has erred in holding the driver of insured vehicle to be wholly and solely negligent, whereas the evidence on record clearly shows that the accident in question had taken place due to negligence of injured- *Nikhil Kumar Sharma*. Counsel for Insurer submits that since injured *Nikhil Kumar Sharma* was responsible for happening of the accident, therefore, no compensation can be granted to him on account of grievous injuries sustained by him in the accident in question. Reliance is placed by Counsel for Insurer upon Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680 to seek reduction in the quantum of compensation awarded under the *non-pecuniary heads*. Regarding rate of interest granted by the Tribunal, counsel for Insurer submits that it is exorbitant and it needs to be suitably reduced. So, modification of impugned Awards is sought by counsel for Insurer.

10. On the contrary, counsel for Claimants and injured supports the impugned Award and submits that the quantum of compensation granted is inadequate. Enhancement of compensation is sought by Counsel for Claimants on the ground that the Tribunal has erred in not making addition of 50% towards "*future prospects*", as the deceased was in permanent employment. It is pointed out by counsel for Claimants that the tax deduction has been made twice while computing the income of deceased *Prajwal Aditya* and so, "*loss of dependency*" ought to be reassessed. Nothing else is urged by either side.

11. Upon hearing and on perusal of impugned Awards, material on record and the decision cited, I find that evidence of injured –*Nikhil Kumar Sharma* and evidence of driver of insured truck *Satbir (R3W1)* and the site plan of the spot of accident on record, reveals that the negligence was of driver of the insured vehicle, who on the highway had suddenly turned his truck to left and in the process, the car in which deceased-*Prajjwal Aditya* and injured were travelling, had hit against the truck. In the considered opinion of this Court, the Tribunal has rightly concluded that the negligence was of the driver of insured vehicle.

12. On the aspect of quantum of compensation awarded to Claimants of deceased-*Prajjwal Aditya*, I find that the deceased was working as Project Manager in a private company and so, the Tribunal has erred in observing that there is no evidence regarding “*future prospects*”. It is so said because the Tribunal in the impugned Award has noted that deceased was promoted w.e.f. 1st October, 2012 and vide document Ex.PW2/5, deceased-*Prajjwal Aditya* was given a higher scale of ₹95,000/- per annum. A perusal of document Ex.PW2/5 of deceased-*Prajjwal Aditya* reveals that in October, 2012, he was promoted as Director Coordinator. So, employment of deceased was of permanent nature and the Tribunal has erred in not making any addition towards “*future prospects*”. Accordingly, in view of Supreme Court’s decision in *Pranay Sethi (Supra)*, addition of 50% towards “*future prospects*” is made, as the deceased was aged 27½ years on the day of accident. This Court also finds that tax deduction has been made twice from the income of deceased-*Prajjwal Aditya*, as tax deduction at source was already made

from his monthly salary and so, there was no occasion to again make further deduction of 10% from his total income. Accordingly, the “*loss of dependency*” of deceased-*Prajwal Aditya* is re-assessed as under:-

$$₹5,48,220/- \times 17 \times \frac{2}{3} \times \frac{150}{100} = ₹93,19,740/-$$

13. The compensation granted by the Tribunal under the ‘*non pecuniary heads*’ needs to be brought in tune with Supreme Court’s Constitution Bench decision in *Pranay Sethi (supra)*. Accordingly, compensation granted by the Tribunal to Claimants of deceased-*Prajwal Aditya* under the heads of ‘*loss of love & affection*’ and “*loss of expectancy of life*” is disallowed. The ‘*funeral expenses*’ are reduced from ₹50,000/- to ₹15,000/-. Similarly, compensation granted under the head ‘*loss of estate*’ is also reduced from ₹1,00,000/- to ₹15,000/- and compensation granted under the head ‘*loss of consortium*’ is reduced from ₹1,00,000/- to ₹40,000/-. Consequentially, the compensation payable to legal heirs of deceased-*Prajwal Aditya* is reassessed as under:-

1.) Loss of dependency	:	₹93,19,740/-
2.) Loss of estate	:	₹15,000/-
3.) Funeral and transport expenses	:	₹15,000/-
4.) Loss of consortium	:	₹40,000/-
Total	:	<u>₹93,89,740/-</u>

14. In the light of aforesaid, total compensation payable to Claimants is enhanced from ₹67,10,874/- to ₹93,89,740/-. As far as interest granted by the Tribunal is concerned, a Three Judge Bench of Supreme Court in a recent decision of *Jagdish v. Mohan and Others*, (2018) 4 SCC 571 has

granted interest @ 9% *per annum* on the awarded compensation and so, in the instant case, rate of interest of 12% p.a. awarded by the Tribunal is reduced and it is directed that the re-assessed compensation shall carry interest @ 9% p.a. The enhanced compensation alongwith interest be deposited within six weeks by Insurer with the Registrar General of this Court and thereafter, it be disbursed to Claimants of deceased-*Prajwal Aditya* in the ratio and manner, as indicated in the impugned Award.

15. In the preceding paragraphs, this Court has already concluded that the negligence was of driver of the insured vehicle and not of injured *Nikhil Kumar Sharma*. So far as quantum of compensation granted to him is concerned, I find that the evidence on record justifies the quantum of compensation granted to him and no case for reducing it is made out. However, in view of Supreme Court's decision in *Jagdish (Supra)*, rate of interest awarded on the compensation is reduced from 12% to 9% p.a. The compensation awarded be released to Injured *Nikhil Kumar Sharma* forthwith.

16. With aforesaid modification in the impugned Awards, the above captioned three appeals and the applications are disposed of. Statutory deposit, if any, be refunded to Insurer.

(SUNIL GAUR)
JUDGE

JULY 31, 2018

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