(2017) 12 DEL CK 0162

In the Delhi High Court

Case No : MAC.APP. 191, 877 Of 2015

New India Assurance Company Ltd APPELLANT

Vs

Nishant Parveen & Ors RESPONDENT

Date of Decision : 06-12-2017

Acts Referred:

Citation : (2017) 12 DEL CK 0162

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Ravinder Singh, Arun Sharma

Final Decision : Disposed Of

Judgement

Sunil Gaur, J

C.M. 27229/2015 in MAC.APP. 877/2015

Delay of 192 days in filing the accompanying appeal is condoned for the reasons stated in the application.

The application is allowed and is accordingly disposed of.

MAC.APP. 191/2015 & C.M. 3326/2015 MAC.APP. 877/2015

1. Above captioned two appeals arise out of common impugned Award of 05th January, 2015, vide which compensation of Rs. 9,48,103/-with interest

at 9% per annum has been awarded to the Claimants who are the wife, two daughters and a son of Mohd. Arif, who died in a vehicular accident on

24th July, 2012. The facts stand noted in the impugned Award need no reproduction for the reason that challenge to the impugned Award in these two

appeals is confined to the assessment of â??loss of incomeâ? and the â??quantum of compensationâ?. On the basis of evidence led, the impugned award has been rendered.

2. With the consent of learned counsel for the parties, these appeals have been heard together and are being disposed of by this common judgment.

3. Learned counsel for Insurer challenges the impugned award on the ground that the deceased did not have a permanent job and so, there is no

question of grant of future prospects and that compensation granted is on the higher side. Learned counsel for Insurer relies upon a recent Constitution

Benchâ??s decision of Supreme Court in National Insurance Company Ltd. Vs. Pranay Sethi & ors. 2017 SCC OnLine SC 1270 in support of above

submissions.

4. On the other hand, learned counsel for the claimants submits that â??loss of incomeâ? has been incorrectly assessed by taking the income of the

deceased on minimum wages, even though the income tax returns were on record. It is submitted that the deceased was having a hardware shop and

his income is duly reflected in the income tax returns of the years 2010-11 and 2011-12 (Ex. PW1/2 and PW1/3). It is submitted that as per income

tax returns, the income of deceased was Rs. 15,037/- per month and since the income tax returns remained unchallenged, therefore, learned Motor

Accident Claims Tribunal (henceforth referred to as the â??Tribunalâ??) ought to have relied upon it.

5. Upon hearing and on perusal of impugned Award, evidence on record and Supreme Courtâ??s decision in Pranay Sethi (Supra), I find that learned

Tribunal has erred in not relying upon the income tax returns (Ex. PW1/2 & PW1/3), in respect of which claimants have already deposed and the

evidence of claimants remains unchallenged. In such a situation, strict rules of evidence would not apply and the learned Tribunal is not justified in not

relying upon the income tax returns of the deceased on record merely because claimants had not chosen to get any witness examined from income tax

department to formally prove the income tax returns in question. It is elementary rule of evidence that when evidence led remains unchallenged, it is

not required to be formally proved.

6. The â??loss of dependencyâ? has not been correctly assessed by the learned Tribunal. It is accordingly re-assessed by taking income of the

deceased to be Rs. 15,037/- per month and after deducting Â¼ towards personal expenses, monthly income of the deceased is assessed at Rs.

11,277/- and by applying the multiplier of 14, it is re-assessed at Rs. 18,94,536/- (11,277 X 12 X 14). Since deceased was having his own hardware

shop, therefore, it cannot be said that he was not self employed. The Constitution Bench of Supreme Court in Pranay Sethi (Supra), has clarified that

in case of self employed persons between the age of 40 to 50 years, addition of 25% is to be made towards â??future prospectsâ? and so, an addition

of 25% towards â??future prospectsâ? instead of 30% is to be made, as the deceased was 44 years of age at the time of this accident. Thus, adding

25% towards â??future prospectsâ??, the â??loss of dependencyâ?? is worked out to be Rs. 23,68,170/-.

7. So far as non-pecuniary compensation is concerned, I find that compensation granted by learned Tribunal under this head needs to be revised in

view of Supreme Courtâ??s decision in Pranay Sethi (Supra). So, the compensation of Rs. 2,35,000/- granted under the non-pecuniary heads has to

be modified. In a case of death, Supreme Court in Pranay Sethi (Supra) has clarified that no compensation under the head of â??loss of care etc.â? is

to be granted. Accordingly, compensation of Rs. 1,00,000/- granted by the Tribunal under the head of â??love and affectionâ? is disallowed.

Compensation granted under the head of â??loss of estateâ? is enhanced from Rs. 10,000/- to Rs. 15,000/- whereas the â??funeral expensesâ?

granted are reduced from Rs. 25,000/- to Rs. 15,000/- and the compensation granted under the head of â??loss of consortiumâ? is also reduced from

Rs. 1,00,000/- to Rs. 40,000/-. Thus, the compensation payable under the non-pecuniary heads is reduced from Rs. 2,35,000/- to Rs. 70,000/-.

8. In view of the above, the total compensation payable to claimants is enhanced from Rs. 9,48,103/- to Rs. 24,38,170/- which shall carry the interest

@ 9% per annum. To the aforesaid extent, the impugned Award is modified with direction to Insurance Company to deposit the amount of enhanced

compensation with the learned Tribunal within four weeks and thereafter, it be released to claimants in the manner, as indicated in the impugned

Award.

9. The above captioned two appeals and pending application are accordingly disposed of with direction to refund the statutory deposit to the Insurer as

per rules.

