

(2018) 09 DEL CK 0140

In the Delhi High Court

Case No : Miscellaneous Appeal No.1129 Of 2017, 174 Of 2018

Mira Devi & Anr

APPELLANT

Vs

Mohd Khalil & Ors. (Iffco Tokio General Insurance Co Ltd)

RESPONDENT

Date of Decision : 04-09-2018

Acts Referred:

Citation : (2018) 09 DEL CK 0140

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Final Decision : Diposed Off

Judgement

“

SUNIL GAUR, J.",,,

1. Impugned Award of 29th July, 2017 grants compensation of Rs.5,10,636/- with interest @ 9% p.a. to legal heirs of deceased-Prateek Kumar, a",,,

Mechanic, aged 17 years and 11 months, on account of fatal injuries suffered by him in a vehicular accident, which took place on 21st March, 2014. In",,,

this accident, an Executive-Rahul, aged 16 years and 8 months, had also sustained injuries and vide separate Award of even date, he has been granted",,,

compensation of Rs.4,83,896/- with interest @ 9% per annum.",,,

2. In the above-captioned appeals, the challenge by learned counsel for Claimants/injured is to impugned Awards on the ground that the finding of",,,

contributory negligence on part of deceased is unwarranted and that quantum of compensation granted by the Tribunal is inadequate. Since the,,

impugned Awards 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.,,,

3.The factual background of this case, as noticed in the impugned Awards, is as under:-"

??Brief facts of the case giving rise to the claim Petition are, that on 21.03.2014, the deceased was driving a motorcycle along with one Rahul as a",

pillion rider and when they reached near Laxmi Niwas Asharam Burari, they were hit by Truck bearing No. HR-55T-2956 owned by respondent no 2",

and being driven by respondent No1. As a result of the accident the deceased and the pillion rider fell on the road and sustained injuries."

The deceased was removed to STC Hospital where he died during the course of treatment."

4. To render the impugned Awards, the Motor Accident Claims Tribunal (hereinafter referred to as "the Tribunal") has relied upon evidence of",

Injured-Rahul and parents of deceased and other evidence on record. The Tribunal has computed the notional income of deceased, a minor, at",

Rs.15,000/- per annum and has deducted 1/3rd towards his "personal expenses" and has applied multiplier of 18 to assess the "loss of",

estate/dependency" at Rs.5,10,636/- and has granted the same amount under the "non-pecuniary heads". However, after deducting 50% on",

account of contributory negligence, the actual compensation granted by the Tribunal to legal heirs of deceased-Prateek Kumar, is Rs.5,10,636/-."

5. In case of Injured-Rahul, the Tribunal has assessed the functional disability at 100% although the permanent disability suffered by him in relation to",

both the lower limbs is 64%. Since Injured-Rahul was minor on the day of the accident, therefore, his notional income was taken to be Rs.15,000/- per",

annum and after deducting 1/3rd towards his "personal expenses", "loss of earning capacity" has been determined at Rs.5,10,636/-. Although",

Injured-Rahul was a pillion rider, yet 50% deduction on account of contributory negligence has been made and the compensation of Rs.2,55,318/- has",

been granted to him. The breakup of compensation granted to Injured-Rahul by the Tribunal under the "non-pecuniary heads",

is as under:-",

1.)Loss of amenities, loss of expectation of life & marriage prospects due to",

to permanent disability : Rs.1,00,000/-",

2.) Pain & Suffering",

3.) Medicines & Medical : Rs.1,00,000/-,,

Â Treatment : Rs.1,87,156/-,,

Â 4.) Conveyance Charges : Rs.20,000/-,,

Â 5.) Special diet : Rs.20,000/-,,

Â 6.) Attendant charges : Rs.30,000/-,,

Total : Rs.4,57,156/-,,

6. However, after deducting 50% on account of contributory negligence, the compensation actually granted by the Tribunal to InjuredRahul is,,

Rs.4,83,896/-.",,,

7. The challenge to impugned Award by learned counsel for Claimants/Injured is on the ground that deduction of 50% on account of contributory,,

negligence in case of Injured-Rahul is not justified as he was a pillion rider. It is submitted that Injured-Rahul was a student and was also working. It is,,

pointed out that even if proof of his income is not there, still his "loss of earning capacity" ought to have been determined on minimum wages",,,

payable to a matriculate. It is further submitted that quantum of compensation granted to Injured-Rahul under the "nonpecuniary heads" is,,

inadequate and it needs to be substantially enhanced.Â 8.In case of deceased, it is submitted by learned counsel for Claimants that this accident was",,,

witnessed by Injured-Rahul and as per evidence of this witness, there was no contributory negligence on the part of deceased and so, the Tribunal has",,,

erred in deducting 50% of the awarded compensation on account of contributory negligence of deceased. Reliance is placed by Claimants",,,

counsel upon Supreme Court's decision in Sudhir Kumar Rana vs. Surinder Singh & Ors. 2008 ACJ 1834 to submit that no contributory,,

negligence is attributable to a minor for want of driving licence as the negligence has to be determined on the facts of each case. It is submitted by,,

Claimants' counsel that the Tribunal has erred in relying upon decision in Chetan Malhotra & Ors. vs. Lala Ram & Ors. 2016 VIII AD (DELHI),,,

415as it was a case of a student whereas the case in hand, is of a Mechanic and so, minimum wages of a skilled worker ought to have been applied",,,

and the applicable multiplier was of 18. So, it is submitted by Claimants' counsel that compensation awarded by the Tribunal to legal heirs of",,,

deceased-Prateek Kumardeserves to be appropriately enhanced.,,,

