

(2018) 09 DEL CK 0239

In the Delhi High Court

Case No : Miscellaneous Application No 315, 317 Of 2013

National Insurance Co. Ltd

APPELLANT

Vs

Rambir Singh & Ors

RESPONDENT

Date of Decision : 13-09-2018

Acts Referred:

Citation : (2018) 09 DEL CK 0239

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Final Decision : Diposed Off

Judgement

SUNIL GAUR, J

1. The above captioned first appeal arises out of impugned Award of 17th January, 2013, vide which the Motor Accident Claims Tribunal (hence forth referred to as "the Tribunal") has awarded compensation of Rs.3,65,000/- (inclusive of interim award of Rs.50,000/-) with interest @ 9% p.a. to

legal heirs of a Student-Vishal, aged 16 years, who had died in a vehicular accident which took place on 9th December, 2005.

2. In this unfortunate accident, another Student-Pawan aged 18 years, was grievously injured and the Tribunal vide separate Award of even date, i.e.

17th January, 2013 , has granted compensation of Rs.7,40,450/- (inclusive of interim award of Rs.25,000/-) with interest @ 9% p.a. to him, which is

under challenge in the above captioned second appeal.

3. Since these two 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.

4. In above captioned appeals, National Insurance Co. Ltd. (here in after referred

to as Insurer) seeks modification of the impugned Award on the ground of contributory/composite negligence and seeks reduction in the quantum of compensation. It is pointed out by Insurer's counsel that appellant is the Insurer of Wagon R car involved in this accident and respondent- ICICI Lombard General Insurance Co. Ltd. is the Insurer of the Tractor involved in this accident.Â

5. The factual background of this case, as noticed in the impugned Award, is as under:-

On the unfortunate day of 9.12.2005 the deceased with his cousin brother Pawan were going from their house to their fields in order to give tea to their grandfather who was working in the fields. At about 5.45 PM when the deceased and his cousin reached on Barwala Begumpur road, Delhi a

collision took place between the three vehicles i.e. Wagon R bearing No.DL 9CM 3227, Eicher Tractor and motorcycle bearing No.DL 8SW 3032

being driven by the deceased. As per the version of the injured Pawan, the accident took place due to the sole negligence of the driver of the Wagon R

car as the said Maruti Wagon R bearing No. DL 9CM

3227 came from behind being rashly and negligently driven

by its driver hit the motorcycle and at the same time Tractor which was passing from opposite direction also hit. However, as per the police version the

said accident was caused due to the negligence and rash driving of the driver of the said tractor. The deceased was taken to Brahm Shakti Hospital,

Delhi for treatment where he was declared dead while his cousin Pawan was admitted with serious injuries. An FIR no.515/05 was lodged

with PS Bawana and a case U/s. 279/337/304A IPC was registered against respondent No.1.Â

6. To render the impugned Award, the Tribunal has relied upon evidence of Injured and legal heirs of deceased and other documentary evidence on

record. The Tribunal has assessed the income of deceased as per the Second Schedule to the Motor Vehicles Act, 1988 and in case of Injured, his

income has been assessed on minimum wages and has made addition of 30% towards future prospects. The Tribunal has also found Injured had

suffered permanent disability of 65% in relation to right lower limb and the functional disability has been also assessed by the Tribunal at 65%. On the

strength of evidence recorded, impugned Award has been rendered.

7. The breakup of compensation awarded by the Tribunal to legal heirs of deceasedâ€Vishal is as under:-

Loss of dependency :Rs.2,25,000/-

Funeral charges :Rs.10,000/-

Loss of Estate :Rs.10,000/-

Loss of love, company and

affection etc. :Rs.1,00,000/-

Loss of gratuitous services :Rs.20,000/-

Total :Rs.3,65,000/-

8. The breakup of compensation awarded by the Tribunal to Injured-Pawan is as

under:-

Loss of income :Rs.10,841/-

Loss of future income :Rs.6,59,609/-

Special diet expenses :Rs.10,000/-

Conveyance charges :Rs.10,000/-

Pain, suffering, mental shock and

trauma :Rs.50,000/-

Total :Rs.7,40,450/-

9. The challenge to the impugned Awards by learned counsel for Insurer is on the

ground that the accident in question had taken place due to

composite negligence of tractor, which had hit from front the motorcycle, on

which the deceased and injured were travelling. It is further submitted that

the accident in question had occurred also due to the contributory negligence of

deceased as he was a minor and was not supposed to drive. It is

submitted that the compensation granted to legal heirs of deceased under the head of "love and affection" and "gratuitous services" is required

to be disallowed. It is next submitted by Insurer's counsel that the Tribunal has erred in not making deduction of 50% towards "personal

expenses" as deceased was unmarried.

10. The compensation granted by the Tribunal to Injured is assailed on the ground that no addition towards "future prospects" is to be made in a

case of injury. To submit so, reliance is placed upon Supreme Court's recent decision in *Anant Son of Sidheshwar Dukre v. Pratap Son of*

Zhamnappa Lamzane & Another, 2018 (10) SCALE 130. It is further submitted that the functional disability of Injured ought to have been assessed at

30%. Thus, it is submitted that the impugned Award deserves to be modified. Â Â

11. Despite service, there is no representation on behalf of Injured and legal heirs of deceased. Learned counsel for respondent- ICICI Lombard

General Insurance Co. Ltd. supports the impugned Award and refutes the aforesaid stand taken on behalf of appellant-Insurer. Â

12. Upon hearing and on perusal of impugned Awards, evidence on record as well as the decision cited, I find that in the face of evidence of Injured-

Pawan, it cannot be said that the accident in question had taken place due to the composite/contributory negligence of the Tractor. It is so said because

there is no cross-examination of the Injured on the aspect of composite or contributory negligence. Supreme Court in its recent decision in *Anant*

(supra), while dealing with the case of an injured, has not made any addition towards "future prospects" and so, no addition towards "future

prospects" is required to be made. The Tribunal has erred in adding 30% towards "future prospects".

13. The Tribunal has rightly assessed the income of the Injured on minimum wages and has also correctly assessed the functional disability at 65%.

Multiplier of 18 has been rightly applied by the Tribunal.

Accordingly, the "loss of earning capacity" of Injured is reassessed as under:
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$$\text{Rs.}3614/- \times 12 \times 18 \times 65/100 = \text{Rs.}5,07,405.60/-, \text{Â (rounded off to Rs.}5,07,406/-)$$

14. Since no cross-objections have been filed by Legal Heirs of deceased and the Injured, therefore, the compensation granted by the Tribunal to the

Injured under the "non pecuniary heads" is maintained.

Consequently, the compensation payable to Injured-Pawan is reassessed as under:-

Loss of earning capacity :Rs.5,07,406/-

Special diet expenses :Rs.10,000/-

Conveyance charges :Rs.10,000/-

Loss of income :Rs.10,841/-

Pain, suffering, mental shock and

trauma :Rs.50,000/

Total :Rs.5,88,247/-

15. In case of deceased, I find that the Tribunal has rightly assessed the notional income of the deceased, who was a minor child, as per the Second

Schedule to the Motor Vehicles Act, 1988. Since no crossobjections have been filed by Claimants, therefore, the multiplier applied by the Tribunal is not

interfered with.However, no deduction towards "personal expenses" of deceased has been made, whereas 50% needs to be deducted towards

"personal expenses" of deceased. Accordingly, "loss of dependency" is reassessed as under: -

Rs.15,000/- X 15 X 50% = Rs.1,12,500/-

16. The compensation granted by the Tribunal to legal heirs of deceased-Vishal under the "non-pecuniary heads" is maintained as they have not

filed any cross-objections. Accordingly, the compensation payable to legal heirs of deceased-Vishal is reassessed as under: -

Loss of earning capacity :Rs.5,07,406/-

Special diet expenses :Rs.10,000/-

Conveyance charges :Rs.10,000/-

Loss of income :Rs.10,841/-

Pain, suffering, mental shock and

trauma :Rs.50,000/

Total :Rs.5,88,247/-

17. In light of aforesaid, total compensation payable to Injured-Pawan is reduced from Rs.7,40,450/- to Rs.5,88,247/- whereas in case of

deceased Vishal, it is reduced from Rs.3,65,000/- to Rs.2,52,500/-. After deducting the interim award of Rs.25,000/- granted by the Tribunal to

Injured-Pawan, the net compensation payable to him comes to Rs.5,63,247/-, whereas after deducting the interim award of Rs.50,000/- granted by

the Tribunal to legal heirs of deceased-Vishal, the net compensation payable to them comes to Rs.2,02,500/-. The modified compensation shall carry

interest @ 9% per annum. After refunding the statutory deposit alongwith excess amount, if any, to appellant-Insurer, the modified compensation be

disbursed to Injured-Pawan and legal heirs of deceased-Vishal respectively, as per this judgment and in the manner as indicated in the respective

impugned Awards.

18. With aforesaid modification in the impugned Awards, the above captioned two appeals are disposed of.