

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

Date of decision: 16th August, 2012

+ **MAC.APP. 245/2012**

NEW INDIA ASSURANCE CO LTD Appellant
Through Mr. Pankaj Seth, Advocate

versus

DEEPTI KAUR & ORS Respondent
Through None

+ **MAC.APP. 246/2012**

NEW INDIA ASSURANCE CO LTD Appellant
Through Mr. Pankaj Seth, Advocate

versus

HARPREET SINGH & ORS Respondent
Through None

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. These two Appeals arise out of a common judgment dated 02.12.2011 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby a compensation of ₹1,83,000/- and ₹1,89,000/- was awarded in MAC APP.245/2012 and MAC APP. 246/2012 respectively. The same is extracted hereunder in a tabulated form:-

Sl. No.	Compensation under various heads	Awarded in Petition No.657/2010 (MAC APP 245/2012)	Awarded in Petition No.622/2010 (MAC APP 246/2012)
1.	Medical Expenses	₹86,000/-	₹84,000/-
2.	Pain & Suffering & Enjoyment of Life	₹ 25,000/-	₹ 25,000/-
3.	Special Diet, Attendant & Conveyance Charges	₹ 30,000/-	₹ 30,000/-
4.	Loss of Income	₹ 42,000/-	₹ 50,000/-
	Total	₹ 1,83,000/-	₹ 1,89,000/-

2. The grounds of challenge are that the negligence on the part of Respondent No.2 was not proved. Rather, according to the learned counsel for the Appellant it was a case of head on collision and thus, there was contributory negligence. It is stated that the compensation of ₹42,000/- and ₹50,000/- respectively towards loss of income and ₹30,000/- towards special diet, Attendant charges and conveyance charges is excessive and exorbitant.
3. I do not find any merit in the Appeals.
4. The First Respondent in the respective Appeals appeared in the witness box and testified to the manner of the accident. Relevant portion of the Claims Tribunal's observations on the issue of negligence is extracted hereunder:-

“The petitioners PW-1 and PW-2 have stated that on 24.11.2008 at about 07:30 p.m. when they were returning home from Jammu in

their Maurti Esteem Car, at Bhakharpur turning, they met with an accident caused by the offending vehicle which was being driven by respondent no.1 in a rash and negligent manner. They stated that all of a sudden the respondent no.1 took U-turn and his dumper came in front of their car. They stated that the respondent no.1 after causing the accident, fled away from the spot. The passersby removed them to a local hospital at Ganaur from where they were shifted to Ganga Ram Hospital. They also filed the FIR of the case Ex.PW2/3 registered against respondent no.1 and stated that the car was totally damaged in the accident. From the FIR, I find that a case was registered on the statement of Harpreet Singh wherein he had specifically alleged that the dumper was being driven by respondent no.1 in a rash and negligent manner. He took a sudden U-turn and hit their car. Nothing material came in the cross examination of PW-1 and PW-2 to draw an inference that the accident did not occur due to rash and negligent driving of offending dumper no.HR-69-5636 by respondent no.1. Further no evidence contrary to this stand has been brought on record by the respondents. The Hon'ble High Court of Delhi in a case titled as 2009 ACJ 287 National Insurance Company Limited Vs. Pushpa Rana has held that where a petitioner files the certified copy of the criminal record showing completion of investigation, issuance of charge-sheet, certified copy of the FIR, all these documents are sufficient proof to come to the conclusion that the driver was negligent. Thus, it is established that the offending vehicle was very much involved in the accident which ultimately led to the injuries on the person of Smt. Deepti Kaur and Sh. Harpreet Singh and the death of the foetus in the womb of Smt. Deepti Kaur. It is also established that Respondent No.1 was driving the offending vehicle in a rash and negligent manner on the day of accident which was owned by Respondent no.2 and insured with Respondent No.3. Thus, the issue no.1 is decided in favour of the petitioners and against the Respondents No.1,2 and 3."

5. The Claimants' testimonies that the Second Respondent suddenly took a U turn remained unchallenged and unrebutted. The Second Respondent did not enter the witness box to give his version of the accident. The fact that the Second Respondent took a U-turn and hit the car speaks volumes

for Respondent No.2's negligence in driving the heavy vehicle like a dumper. I do not find any ground to interfere in the finding on negligence reached by the Claims Tribunal.

6. Respondent Deepti Kaur in MAC APP.245/2012 suffered fracture of shaft femur right with butterfly fragment. She remained admitted in Sir Ganga Ram Hospital from 27.11.2008 to 02.12.2008. As per the patient's history recorded in the discharge summary, the First Respondent was initially treated in the hospital near to the place of accident in Sonapat and was later on referred to Sir Ganga Ram Hospital. During the course of her admission, the First Respondent underwent surgery i.e. IM interlocking nailing right femur. She remained an outdoor patient for a period of about four months. With the nature of injuries suffered by her she could not attend her work for a period of about four months.
7. From the First Respondent's testimony, it was established that she was getting a salary of ₹10,500/- while working with M/s. Vikas Yadav CA. The First Respondent was a Graduate. I do not find any reason to disbelieve her income of ₹10,500/- per month in the year 2008.
8. With the nature of injuries suffered, the First Respondent was not in a position to attend her daily work of her own. In her testimony, the First Respondent deposed that she had to engage two maids on permanent basis to look after her husband and minor daughter and had to pay ₹10,000/- as security for each of the maids in addition to ₹4,000/- per month as salary to each one of them. She deposed that even on the date of filing her Affidavit in (November, 2010) the maids were still working.

9. In the circumstances, compensation of ₹30,000/- in lump sum towards Attendant charges, special diet and conveyance cannot be said to be excessive.
10. I see no reason to disbelieve First Respondent's testimony regarding engaging the maid servants. Even if the First Respondent did not engage any Attendant and the gratuitous services were rendered by some or other of her relations, the First Respondent is entitled to a suitable compensation towards gratuitous services (*Delhi Transport Corporation and Anr. v. Lalita AIR 1981 Delhi 558*).
11. Similarly, the First Respondent Harpreet Singh in MAC APP.246/2012 suffered injuries on his ribs, knee and forehead. He remained admitted in Sir Ganga Ram Hospital from 25.11.2008 to 02.12.2008. He had to be given 25 stitches on his face. He spent ₹83,684/- on his treatment. An award of ₹84,000/- towards his treatment is not disputed by the Appellant Insurance Company.
12. The Claims Tribunal on the basis of his ITR Ex.PW-1/1 for ₹2,43,280/- awarded him a sum of ₹50,000/- towards loss of income for three months, which to my mind, is just and reasonable.
13. The compensation awarded towards special diet, Attendant charges and conveyance charges in view of the facts mentioned earlier is just and reasonable.
14. The impugned judgment does not call for any interference. Both the Appeals are accordingly dismissed.

15. The statutory deposit of ₹25,000/- if any, shall be refunded to the Appellant Insurance Company in both the Appeals.
16. Pending Applications stand disposed of.

(G.P. MITTAL)
JUDGE

AUGUST 16, 2012
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