

\$~A-52 to 62

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

%

Date of Decision: 18.11.2014

- + **MAC.APP. 431/2011**
NEW INDIA ASSURANCE CO LTD Appellant
Through
versus
HARI OM & ORS Respondents
Through
- + **MAC.APP. 434/2011**
NEW INDIA ASSURANCE CO LTD Appellant
Through
versus
HARI OM & ORS Respondents
Through
- + **MAC.APP. 432/2011**
NEW INDIA ASSURANCE CO LTD Appellant
Through
versus
HARI OM & ORS Respondents
Through
- + **MAC.APP. 538/2011**
HARI OM VERMA Appellant
Through
versus
PAPPU & ORS Respondents
Through
- + **MAC.APP. 537/2011**
HARI OM VERMA Appellant
Through
versus
PAPPU & ORS Respondents

+	Through <u>MAC.APP. 639/2011</u> PREM NATH ARORA	 Appellant
	Through versus HARI OM VERMA & ORS Through	 Respondents
+	<u>MAC.APP. 640/2011</u> PREM NATH ARORA	 Appellant
	Through versus HARI OM VERMA & ORS Through	 Respondents
+	<u>MAC.APP. 649/2011</u> PREM NATH ARORA	 Appellant
	Through versus HARI OM VERMA & ORS Through	 Respondents
+	<u>MAC.APP. 692/2011</u> SANDEEP SETHI	 Appellant
	Through versus HARI OM VERMA & ORS Through	 Respondents
+	<u>MAC.APP. 694/2011</u> SANDEEP SETHI	 Appellant
	Through versus HARI OM VERMA & ORS Through	 Respondents

+ **MAC.APP. 697/2011**
SANDEEP SETHI

..... Appellant

Through

versus

HARI OM VERMA & ORS

..... Respondents

Through

Present: Mr.K.L.Nandwani and Mr.Manish Kaushik, Advocates for the
New India Assurance company
Mr.Vinod Sharma, Advocate for Mr.Prem Nath Arora.
Mr.Arvind Bhardwaj, Advocate for Mr.Sandeep Sethi.
Ms.Manpreet Kaur, Advocate for Mr.Hari Om Verma.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. These appeals are filed against a common Award dated 19.02.2011. The award disposed of three claim petitions MACT No.268/2010 pertained to the injuries sustained by the claimant Hari Om Verma. MACT No.277/2010 pertained to the death of the wife of Hari Om Verma and MACT No.264/2010 pertained to the death of Ms.Sonia daughter of Hari Om Verma.

2. The brief facts are that the claimant Shri Hari Om Verma with his wife and daughter were going on a motorcycle on 11.09.2005. At Mandir Marg Chowk, Krishna Nagar Chowk, Delhi, all of a sudden a Tata Indica car driven by its driver at a fast speed rashly and negligently came and took a sudden right turn without caring for the signal. The car hit the motorcycle and thereafter ran over the central divider of the chowk. As a result of the accident, the claimant Shri Hari Om Verma, his daughter and wife fell down. They, however, did not receive any injury. They were trying to stand up, but in the meantime a truck

driven by its driver at a very fast speed rashly and negligently came from behind and ran over Hari Om Verma, his wife and daughter. The daughter and wife of Shri Hari Om Verma died. Shri Hari Om Verma himself suffered serious injuries. Compensation was awarded to the claimant. 50% liability was imposed on New India Assurance Company Ltd. who insured the offending truck. 50% liability was thrust on the owner of driver of the Indica car, as it was not insured.

MAC.APP.Nos.431/2011, 432/2011 & 434/2011

3. These are appeals filed by the New India Assurance Company Limited who had issued the insurance policy for the offending truck. By the said appeals they have challenged the impugned Award.

4. Learned counsel appearing for the appellant insurance company submits that it is a case where the claimants were also responsible for contributory negligence as three people were sitting on the motorcycle contrary to section 128 of the Motor Vehicles Act, 1988. He secondly submits that the truck which is insured by the appellant did not have a valid permit and hence the appellants do not have any liability to pay the awarded amount. It is lastly submitted that even otherwise the accident did not take place on account of any contributory negligence of the truck as he submits that as stated by PW-3 an eye witness, the driver of the Indica car was drunk.

5. As far as the first submission of contributory negligence is concerned, I am not persuaded to interfere with the Award. PW-2/Hari Om Verma in his evidence has said that he was driving his motorcycle at a normal speed at the Mandir Marg Road, Krishna Nagar Chowk. The Indica Car came and took a sudden right turn and hit the motorcycle. He further states that due to the

Indica car hitting the motorcycle the occupants of the motorcycle did not receive any injury and they were in the process of trying to stand up when suddenly a truck came from another side in a rash and negligent manner and ran over the occupants of the motorcycle and dragged them all for a long distance.

6. In the light of the above facts, the accident with the truck in any case took place when the deceased and the claimant Hari Om Verma was in the process of standing on the road. The fact that three of them were riding on the motorcycle has nothing to do with the manner in which the truck caused injury/death to the claimant/deceased. The fact that the motorcycle had three occupants has no nexus to the accident. I do not find any merit in the same.

7. On the issue of permit, the Tribunal notes in its award that the insurance company examined Shri Pawan Malhotra R3W1 who accepted/exhibited the notice under Order 12 Rule 8 CPC to the driver and owner of the offending truck to produce the permit and the driving license. The contention of the appellant was noted that the said driver and owner failed to produce the driving license or permit. The Tribunal further noted that attested copy of the driving license of the driver of the offending vehicle, namely, Mr.Pappu and the certificate of fitness of the Truck had already been filed by the police with the status report. The Tribunal notes that no efforts were made by the insurance company to get the said documents verified by examining the concerned officer from the transport authority. The Tribunal relying upon the judgment of this Court in the case of *National Insurance Company vs. Nirabjit Kaur MANU/DE/0933/2008* and of the Supreme Court in *Narcinva V. Kamat and Anr. vs. Alfredo Antonia Doe Martins and Ors., 1985 ACJ 397* held that onus

being on the insurance company as they did not take any steps to discharge the onus, the liability would be of the insurance company.

8. I see no reason to differ with the said view. The relevant copy of driving license of the driver of the offending vehicle and the copy of the RC are on record. It was for the appellant to prove that they are not valid. They failed to discharge the onus.

9. As far as the contention regarding the driver of the Indica Car being drunk, PW-3 Khajan Saini has said that the Indica car was coming from the sideways and touched the motorcycle lightly. He mentions that he could see that the Indica car driver was drunk and could not control the vehicle.

10. Shri Sandeep Sethi R4W1 the driver of the offending vehicle Indica car in his evidence by way of affidavit has said that he was returning home from his factory. He says that the traffic signal was blinking and the signal was free for every direction. He of course gives a different story of the Indica car being struck by the truck which was overloaded with iron rods because of which his car jumped over the divider after hitting the vehicle.

11. However, it is not possible to conclude about the driver of the Indica car being drunk merely on the basis of statement of PW-2. No breath analysis test or any scientific investigation was done to show that the driver of the Indica car was drunk and was not able to control the vehicle.

12. In the absence of any documentary proof on the basis of a bald statement of PW-3 who had no way of really verifying the alleged alcohol intake of the driver of the offending vehicle India car, it is not possible to conclude that the said driver was drunk.

13. In the light of the above, there is no merit in the submissions of the

appellant/insurance company. These appeals are accordingly dismissed.

MAC.APP.692/2011, 694/2011, 697/2011, 639/2011, 640/2011 & 649/2011

14. MAC.APP.No.692/2011, 694/2011 & 697/2011 are filed by Shri Sandeep Sethi, the driver of the offending vehicle i.e. Indica car and also the present owner of the car. Mac.App.No.639/2011, 640/2011 and 649/2011 are filed by Shri Prem Nath Arora, the previous owner of the Indica car who continues to be the registered owner of the car.

15. The Tribunal noted that 50% of the liability is to be fastened on the driver and owner of the Tata Indica Car. The Tribunal also noted that R5W1 Shri Prem Nath Arora has deposed that he has sold the car to Shri Sandeep Sethi on 16.12.2004. Copy of the delivery receipt was exhibited as Ex.R5/1. He has also noted that after the accident it was Sandeep Sethi who approached for release of the car on superdari. The Tribunal notes that Shri Prem Nath Arora got the car released on superdari but handed it over to Shri Sandeep Sethi. Sandeep Sethi has denied having purchased the Indica car from Shri Prem Nath Arora and also denied his signatures on the receipt. It is, however, not denied that he was driving the vehicle. The Tribunal also noted that Shri Prem Nath Arora failed to inform the Transport Department about the sale. Further Shri Prem Nath Arora had taken the vehicle on superdari from the criminal court meaning thereby that he himself claimed himself to be the owner of the vehicle and he executed the superdarinama. Hence, the Tribunal held that Shri Prem Nath Arora was the owner of the vehicle. However, Shri Sandeep Sethi was held to be the driver and both were held jointly and severally liable to satisfy 50% of the awarded amount. The Indica car was not insured.

16. Learned counsel appearing for the said owner and driver of the Indica

Car submits that the Tribunal has wrongly thrust 50% liability on them. It is submitted that no accident took place with the Indica car. In fact reliance is placed on the evidence of PW-2 according to whom the Indica car only brushed against the motorcycle and the occupants of the motorcycle were in the process of getting up without having suffered any injury when they were run over by the truck. It is secondly submitted that the owner Shri Prem Nath Arora and the driver Shri Sandeep Sethi of the Indica Car initially in the claim petition were not made a party. They were subsequently added as a party to the claim petition as an afterthought.

17. In my opinion the evidence of PW-1 and PW-2 is quite clear. It is a clear case of contributory negligence as the occupants of the motorcycle were thrown on the road on account of the accident caused by the offending vehicle i.e. Indica car. The traffic signal as per PW-1 and PW-2 was green for the motorcycle. Hence, he had a right of way. Yet the Indica car has crossed the crossing wrongfully without the signal and hit the motorcycle. The car was obviously at a high speed because after hitting the motorcycle the driver could not control the car but has climbed over the divider. Clearly, the Indica car was being driven rashly. There is no merit in the said plea as it is a clear case of contributory negligence.

18. The contention on the issue of impleadment of Mr.Sandeep Sethi and Mr.Prem Nath Arora after filing of the claim petition has no meaning. It does not in any manner change or modify the facts and the reasons as to why the accident has taken place. There is no merit in these appeals and the same are dismissed.

MAC.APP.No.538/2011

19. This appeal is filed by Shri Hari Om Verma for enhancement of compensation.

20. In the said accident Shri Hari Om Verma suffered injuries on the leg. He was admitted to GTB Hospital where his operation was conducted. The Disability Certificate shows that he had 75% disability of all four limbs. The Tribunal assessed the disability of the whole body at 40%. The Tribunal further in the absence of any material on record assessed the income of the claimant based on minimum wages i.e. Rs.3200/- per month. On the basis of this assessment and noting that the age of the injured was 43 years at the time of the accident a total compensation of Rs.4,53,968/- was awarded. The break-up is as follows:-

1.Compensation towards pain and suffering	95,000/-
2.Future loss in earning capacity due to disability	2,15,040/-
3..Expenses towards medical bills	13,928/-
4.Compensation towards loss of amenities & disfiguration	1,00,000/-
5.Compensation towards conveyance and special diet (without bills)	20,000/-
6. Medical Expenses without bills	10,000/-
Total	4,53,968/-

21. Learned counsel appearing for the claimant submits that the functional disability of 40% is wrong and the functional disability should have been at least 75%. She further submits that after having assessed the income at Rs. 3,200/- the income has not been increased for future prospects for computing

loss of dependency. It is further submitted that the injured remained on bed for nearly two years and loss of salary has not been awarded. In addition, it is urged that compensation for pain and suffering, conveyance and diet is on a much lower side. It is further stated that no attendant charges were given.

22. The Disability Certificate Ex.P5 issued by Lal Bahadur Shastri Hospital, Delhi states that the injured has 75% disability of all four limbs. In his affidavit by way of evidence it is only stated that he was running a business of vehicle repairing garage but due to the accident he has lost his business and that after the accident his shop is closed.

23. It is true that the injured has produced no documents whatsoever. Further the affidavit filed is cryptic and gives no details of the work he was doing prior to the accident. No documentary evidence has been placed on record regarding the nature of disability suffered and how the disability has affected his mobility and functioning and carrying on his work

24. On the medical treatment of the injured Shri Hari Om Verma Mr Prem Nath, Record Clerk from LBS hospital had appeared. He got photocopies of summoned record which were marked as 'Mark A'. He did not bring the originals. No medical record has been placed on record.

25. Clearly the evidence is quite inadequate. However, I may note that the evidence by way of affidavit which is filed by Shri Hari Om Verma bears his thumb impression. It appears that he is illiterate and had to rely upon legal advice to prepare his evidence. It may not be proper to blame him.

26. In my view the injured has suffered physical impairment of four limbs to the extent of 75%. Irrespective of the nature of job that he may have been performing the nature of disability is such as to severally hamper his

functioning. Though the award is not clear, his income appears to be assessed based on minimum wages for an unskilled worker. Accordingly, in these facts and circumstances, I enhance the functional disability assessed by the Tribunal from 40% to 75%.

27. On future prospects the injured was 43 years of age at the time of accident. Keeping in view the judgment of the Supreme Court in *Rajesh & Ors. vs. Rajbir Singh & Ors., (2013) 9 SCC 54* and, *V.Mekala vs. M.Malathi & Anr., 2014 ACJ 1441*, I enhance the income by 30% for the purpose of computing loss of future earnings.

28. The loss of earning capacity due to disability now amounts to Rs.5,24,160/- [(3200 +30%) x 12 x 75% x 14]

On the contention of learned counsel for the injured that he remained on bed for two years, there is no evidence placed on record. In the absence of any evidence on record it is not possible to award any compensation for the said period. However, the Tribunal noted that the injured must have remained out of work for 3-4 months. However, it did not grant any compensation for loss of earnings for the said period. Hence, I award Rs.12,800/-(3200 x 4) as compensation for loss of income for the period he had remained out of work i.e. for four months.

29. Keeping into account the nature of injuries suffered by the injured I enhance the compensation towards pain and suffering from 95,000/- to Rs.1,50,000/-. Towards Conveyance and special diet I enhance the compensation from Rs.20,000/- to Rs.75,000/-.

30. On attendant charges I may note that the Tribunal has concluded that the injured must have remained out of work for 3-4 months. Hence, keeping this

into account, I award a sum of Rs.25,000/- as attendant charges.

The total compensation now payable to the injured reads as under:-

1.Compensation towards pain and suffering	Rs.1,50,000/-
2.Future loss in earning capacity due to disability	Rs.5,24,160/-
3..Expenses towards medical bills	Rs.13,928/-
4.Compensation towards loss of amenities & disfiguration	Rs.1,00,000/-
5.Compensation towards conveyance and special diet (without bills)	Rs.75,000/-
6. Medical Expenses without bills	10,000/-
7. Attendant Charges	Rs.25,000/-
8. Loss of income during treatment	Rs.12,800/-
Total	Rs.9,10,888/-

31. The insurance company will pay 50% of the enhanced compensation. Shri Sandeep Sethi and Prem Nath Arora will pay 50% of the enhanced compensation. The compensation shall be paid alongwith interest @ 6% per annum from the date of filing the claim petition till recovery. The enhanced compensation amount will be deposited with the Registrar General of this Court. On receipt of the said amount the Registrar General shall release the said compensation amount.

MAC.APP.537/2011

32. This appeal pertains to the compensation awarded by the tribunal to the dependents of deceased Ms. Sonia, a young girl of 20 years of age. No cogent submissions have been made to explain as to why the award passed in the

present case is erroneous.

33. The tribunal noted that as per PW1, the deceased was self-employed and earning Rs.3000/- per month. The tribunal noted that the wages for unskilled worker at the relevant time was Rs.3165/- per month. The tribunal accepted the contention of the appellant and took the income of the deceased at Rs.3000/- per month. The total loss was assessed at Rs.5,04,000/-. The petitioner was not dependent on deceased, and therefore, the loss of Estate was taken as $1/3^{\text{rd}}$ i.e. Rs.1,68,000/-. Rs. 10,000/- was given under loss of love and affection and Rs.5000/- towards funeral expenses. A total compensation of Rs.1,83,000/- was awarded. I may however add that the tribunal has taken the age of the deceased as 20 years and has taken a multiplier of 14 based on the age of the father of the deceased.

34. This Court in the case of *Mohd. Hasnain & Ors. vs. Jagram Meena & Ors.* MANU/DE/0715/2014; 2014 (142) DRJ 303 held that the multiplier has to be based on the age of the deceased. That was a case where the age of the deceased was 39 years.

35. This Court in the said case of *Mohd. Hasnain & Ors. vs. Jagram Meena & Ors.* (*supra*) relied on the judgments of the Supreme Court in case of *M. Mansoor vs. United India Insurance Co. Ltd.*, MANU/SC/1042 and in the case *Amrit Bhanu Shali & Ors. vs. National Insurance Co. Ltd. & Ors.* MANU/SC/0537/2012. In *Amrit Bhanu Shali*, the Supreme Court held as follows:-

“15. The selection of multiplier is based on the age of the deceased and not on the basis of the age of the dependants. There may be a number of dependants of the deceased whose age may be different and, therefore, the age of the dependants has no nexus with the computation of compensation.”

36. *M. Mansoor vs. United India Insurance Co. Ltd (supra)* was a case where the deceased was a bachelor of 24 years of age and the Supreme Court held that the selection of the multiplier is based on the age of the deceased and not the age of the dependants. Further, in the case of *Amrit Bhanu Shali & Ors. vs. National Insurance Co. Ltd. & Ors. (supra)* the deceased was a bachelor aged 26 years and the Court applied the multiplier of 17.

37. I may further note that in MAC APP.761/2012 *Rakesh and Ors. vs. National Insurance Co. Ltd. and Ors.* vide judgment dated 02.04.2014 where the deceased was 24 years the Tribunal had taken the multiplier of 13 considering the age of the mother of the deceased, as he was a bachelor. This court relying upon the judgments of the Supreme Court in the case of *Mohd. Hasnain & Ors. vs. Jagram Meena & Ors. (supra)* applied a multiplier of 18 based on the age of the deceased. Against the said judgment the appellant had filed an SLP before the Supreme Court. The said SLP No.5612/2014 was dismissed by the Supreme Court on 10.10.2014. In view of the said judgment passed by this Court, following the judgments of the Supreme Court, the Tribunal erred in not taking the age of the deceased to consider the appropriate multiplier.

38. Accordingly, appropriate multiplier to be used is 18. Hence, the loss of dependency now comes to Rs. 6,48,000/-. (3,000 x 12 x 18). Regarding love and affection, I enhance the compensation payable from Rs.10,000/- to Rs.1,00,000/- (Rupees One Lac).

39. The tribunal has assessed the loss of Estate as $\frac{1}{3}^{\text{rd}}$ no reason has been given as to why in the facts and circumstances, this may not be accepted. Hence, the total compensation would be as follows Rs.2,16,000/- (6,48,000 x

1/3).

40. Hence, the total compensation amounts to Rs.3,26,000/-.

41. The insurance company may deposit the additional compensation with interest @ 7.5% per annum from the date of filing of the claim petition till deposit in the Court. On receipt, the same may be released to the claimants.

JAYANT NATH, J

NOVEMBER 18, 2014

'raj'