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

Date of decision 02.12.2014

- + MAC.APP. 646/2011
NEW INDIA ASSURANCE CO LTD. Appellant
Through Mr. Manish Kaushik for Mr. K.L.
Nandwani, and Mr. Sameer Nandwani,
Advocates
versus
SANJAY JAIN & ORS Respondents
Through Ms. Rupika Singh, Advocate for Mr.
Navneet Goyal, Advocate for R1&1
- + MAC.APP. 145/2012
CHAYAN GUPTA Appellant
Through Ms. Rupika Singh, Advocate for Mr.
Navneet Goyal, Advocate
versus
MANAS BANSAL & ORS Respondents
Through Mr. Manish Kaushik for Mr. K.L.
Nandwani, and Mr. Sameer Nandwani,
Advocates for R3
- + MAC.APP. 305/2012
SANJAY JAIN & ORS Appellant
Through Ms. Rupika Singh, Advocate for Mr.
Navneet Goyal, Advocate for R1&1
versus
NEW INDIA ASSURANCE CO LTD Respondents
Through Mr. Manish Kaushik for Mr. K.L.
Nandwani, and Mr. Sameer Nandwani,
Advocates for NIACL

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. These three appeals arise out of the same accident that took place on 14.3.2003.
2. MAC.APP.646/2011 is filed by the insurance company seeking exoneration/reduction of the liability of the awarded amount. MAC.APP.145/2012 is filed by the injured/appellant Chayan Gupta seeking enhancement of compensation awarded by the Tribunal. MAC.APP.305/2012 is filed by the dependents of late Shri Anish Jain who died in the road accident also seeking enhancement of compensation.
3. The brief facts are that on 14.3.2003 five friends had gone to a birthday celebration at Hyatt Regency Hotel. They were returning in a Baleno car which was driven by Shri Manas Bansal. The said Baleno car was driven at a very high speed in a rash and negligent manner. It hit an ambassador car at Prithvi Raj Road and thereafter struck against the pavement. Three occupants of the car died, namely, Shri Manish Nigam, Shri Anshul Khandelwal and Shri Anish Jain. The fourth occupant Shri Chayan Gupta got injured. The driver Manas Bansal escaped unhurt. Four separate claim petitions were filed. The claim petition of the LR's of Shri Manish Nigam was dismissed as his father was the owner of the car and one of the claimants. The Tribunal held that no claim petition can be filed by the claimants against himself and hence dismissed the claim petition. In the second petition, no appeal has been filed by the dependents of Shri Anshul Khandelwal. In the case of the deceased Anish Jain a total compensation of Rs.10,93,000/- was awarded as follows:-

Loss of dependency	10,08,000/-
Funeral expenses	25,000/-

Loss of love and affection	50,000/-
Loss of estate	10,000/-
Total	10,93,000/-

4. In the case of Shri Chayan Gupta a total compensation for the injuries sustained of Rs.4,28,286/- was awarded break-up of which is as follows:-

Medicine and medical treatment	3,23,286/-
Pain & suffering and loss of amenities in life	50,000/-
Conveyance and special diet	25,000/-
Loss of income	Nil
Loss of studies	30,000/-
Total	4,28,286/-

MAC.APP.646/2011

5. I will first deal with the appeal filed by the appellant insurance company MAC.APP.646/2011. Learned counsel appearing for the appellant submits that it would be a case of contributory negligence as according to learned counsel the driver of the vehicle and the occupants were all drunk. Hence, he submits that it was a case of contributory negligence and the appellant insurance company would be liable accordingly. He further submits that future prospects have been wrongly granted while computing loss of dependency in the case of Anish Jain inasmuch as the deceased did not have any regular employment.

6. Coming to the contention of contributory negligence raised by the learned counsel for the appellant a perusal of the Award shows that the

Tribunal relied upon the evidence of Chayan Gupta, an eye witness, criminal records including FIR and chargesheet filed against the driver of the Baleno car Shri Manas Bansal and his arrest memo. Based on this evidence the Tribunal concluded that the accident took place due to the rash and negligent driving of the driver of the Baleno car.

7. Shri Chayan Gupta PW-4 in his evidence by way of affidavit has said that Manas Bansal was driving the car in a fast speed in a rash and negligent manner and at Prithvi Raj Road he lost control over the car and rammed it into the ambassador car after going on the wrong side of the road. He has denied in his cross-examination that any drinks were taken on that date. He also denies that Manas Bansal the driver of the Baleno car had taken liquor before the dinner or was driving under the influence of liquor.

8. The site plan prepared by the police shows that the Baleno Car has deviated to the right side of its normal path. It was being driven at a fast speed as there are skid marks to be seen. After having gone to the wrong side it has hit the ambassador car. The rash and negligent driving of the driver of the Baleno car is writ large in the manner of the accident as depicted in the site plan.

9. There is no proof to show that the occupants of the Baleno car or the driver Manas Bansal was under the influence of liquor. There are no reasons to differ with the view taken by the Tribunal that the accident occurred due to the rash and negligent driving of the Baleno car.

10. Coming to the next submission, the assessed income of the deceased has been enhanced by future prospects in the case of Anish Jain. The Award shows that the Tribunal noted that the deceased Anish Jain was 19 years old. He was a

student of BBA (Hons) in Jagan Nath International Management School, Kalkaji. He was doing some odd jobs with Proprietor Pawan Gupta and a Company M/s.Express Engineering and Spare. The Tribunal assessed his income at Rs.8,000/- per month and awarded 50% towards future prospects.

11. I can take judicial note of the fact that minimum wages for a matriculate in 2002 were Rs.3115.4/- P.M. and in 2012 were Rs.8528/- P.M. It is obvious that the prescribed minimum wages have more than doubled in ten years.

12. In case of ***Rajesh & Ors. vs. Rajbir Singh & Ors., (2013) 9 SCC 54*** the Supreme Court held that in the case of self employed or those on fixed wages, when the victim is below 40 years an addition of 50% should be made in the wages for the purpose of computing loss of future earnings.

13. In the case of ***Smt.Savita vs. Bindar Singh & Ors., (2014) 4 SCC 505***, the Supreme Court was of the view that in the case of self employed or those engaged on fixed wages, 30% increase in income over period of time would be appropriate. In the case of ***V.Mekala vs. M.Malathi & Anr., 2014 ACJ 1441***, the Supreme Court in the case of injury to a student who was studying in Class XI aged 16 years had awarded 50% increase for future prospects.

14. Further, this court in the case of ***ICICI Lombard General Insurance Company vs. Angrej Singh & Ors.*** in MAC APP. 846/2011 in judgment dated 30.09.2013 had gone into this issue and had noted the judgments of the Supreme Court in the case of ***Smt.Sarla Verma and Ors. vs. Delhi Transport Corporation and Anr., (2009) 6 SCC 121***, ***Reshma Kumari & Ors. vs. Madan Mohan & Anr., 2013 ACJ 1253*** and ***Rajesh & Ors. vs. Rajbir Singh & Ors., (supra)*** and held that the future prospects should be given to persons who are self-employed or on fixed wages.

15. I may further note that this court 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 old added 50% to the income towards future prospects for computing loss of dependency based on the judgment of the Supreme Court in the case of ***Rajesh & Ors. vs. Rajbir Singh & Ors.***(*supra*) the judgment of this Court in the case of ***ICICI Lombard General Insurance Ltd. vs. Angresh Singh*** (*supra*). 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.

16. In view of the abovementioned judgments, in my opinion, the Tribunal has rightly increased the income of the deceased towards future prospects for the calculation of loss of dependency.

17. Accordingly, there is no merit in the said contention of the insurance company.

18. The present appeal is dismissed.

19. Statutory amount be released to the appellant.

MAC.APP.305/2012

20. I will now deal with the appeal filed by LRs of Shri Anish Jain for enhancement of compensation. Learned counsel appearing for the appellant/claimant submits that the Tribunal has applied the wrong multiplier while assessing the loss of dependency. It is alleged that the multiplier of 14 has been used based on the age of the parents of the deceased who were 44 and 43 years of age at the time of the accident. She submits that the appropriate multiplier has to be based on the age of the deceased who was 19 years old at the time of the accident. She further submits that the non pecuniary damages

have been awarded on the lower side and that 50% have been wrongly deducted for personal expenses.

21. As far as multiplier is concerned, 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.

22. 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.”

23. ***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.

24. 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.

25. In view of the above legal position, the multiplier of 18 would be used in the present case. Loss of dependency now amounts to Rs.12,96,000/- [(8000 + 50% -1/2) x 12 x 18].

26. On non pecuniary damages, keeping in view the judgment of the Supreme Court in ***Rajesh and others vs. Rajbir Singh and others (supra)*** I enhance the compensation payable for loss of love and affection from Rs.50,000/- to Rs.1,00,000/-.

27. As far as deduction of 50% of personal expenses is concerned it is in order as per judgment of ***Sarla Verma vs. DTC, (2009) 6 SCC 121***. Total compensation would hence work out to be as follows:-

Loss of dependency	Rs.12,96,000/-
Loss of love and affection	Rs.1,00,000/-
Funeral expenses	Rs.25,000/-
<u>Loss of estate</u>	<u>Rs.10,000/-</u>
<u>Total</u>	<u>Rs.14,31,000/-</u>

28. Hence the insurance company may deposit the additional compensation amount alongwith interest @7.5% per annum from the date of filing the appeal till deposit in Court. The Insurance Company within six weeks shall deposit the

additional compensation amount with the Registrar General of this Court who shall release the same to the claimant as per directions of the Tribunal.

MAC.APP.145/2012

29. This appeal is filed by the injured Chayan Gupta for enhancement of compensation. It is urged that the appellant had undergone treatment for 13 months and the Tribunal has awarded a lump sum of Rs.30,000/- for loss of studies which is on the lower side. It is further urged that future prospects have also not been added while computing compensation and lastly non pecuniary damages are on the lower side and no compensation has been paid for loss of marriage prospects.

30. As per the Award the claimant Chayan Gupta sustained multiple fracture on both legs and injury on left elbow abrasions and blunt injuries all over the body. He was removed from the car after cutting the body of the car. Steel implants have been inserted in both his legs. He was admitted in hospital from 24.6.2003 to 29.6.2003 and again on 11.4.2004 till 18.4.2004. He has been regularly taking physiotherapy. The Tribunal for pain and suffering awarded Rs.50,000/-, Rs.25,000/- for conveyance and special diet.. The tribunal noted that no proof of employment in the firm of Fabric Point, Okhla has been placed on record. Hence no loss of income was granted to the petitioner. However, taking note of the fact that the claimant was hospitalised for a short period the Tribunal awarded a sum of Rs.30,000/- for loss of studies.

31. Keeping in view the details of the sufferings of the appellant, I enhance the compensation for loss of studies to Rs.75,000/-. I also award a sum of Rs.30,000/- as attendant charges.

32. As per evidence of the claimant by way of affidavit, there is no

permanent disability suffered. In the light of the same to claim compensation for loss of future prospects and loss of marriage prospects appears to be not based on facts. No grounds are made out for the same.

33. Hence, total compensation now payable to the claimant comes to as follows:-

Medicine	Rs.3,23,826/-
Pain and suffering	Rs.50,000/-
Conveyance & diet	Rs.25,000/-
Loss of studies	Rs.75,000/-
Attendant charges	Rs.30,000/-
<u>Total</u>	<u>Rs.5,03,826/-</u>

34. Appeal stands disposed of.

35. The insurance company/Respondent No.1 may deposit the additional compensation amount alongwith accumulated interest @ 7.5%_per annum with the Registrar General of this Court within a period of four weeks from the date of filing the appeal till deposit in Court. On receipt, the same be released to the claimants.

JAYANT NATH, J

DECEMBER 02, 2014

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