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

Date of Decision: 8th February, 2016

+ **MAC.APP. 591/2013**

YASHPAL SHARMA & ORS. Appellants

Through: Mr. O.P. Manie, Adv.

Versus

UNITED INDIA INSURANCE CO. LTD. Respondent

**Through: Mr. Rajesh Dwivedi for Mr. A.K.
De, Adv.**

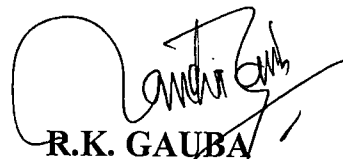
CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

For detailed judgment, the decision dated 08.02.2016 in
MAC.APP. 1037/2011 may be referred to.


R.K. GAUBA
(JUDGE)

FEBRUARY 08, 2016

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

Date of Decision: 8th February, 2016

+ **MAC.APP. 1037/2011 & CM No. 21113/2011**

UNITED INDIA INSURANCE CO. LTD. Appellant

Through: Mr. Rajesh Dwivedi for Mr. A.K.
De, Adv.

versus

YASHPAL SHARMA & ORS. Respondents

Through: Mr. O.P. Manie, Adv. for R-1.

+ **MAC.APP. 591/2013**

YASHPAL SHARMA & ORS. Appellants

Through: Mr. O.P. Manie, Adv.

versus

UNITED INDIA INSURANCE CO. LTD. Respondent

Through: Mr. Rajesh Dwivedi for Mr. A.K.
De, Adv.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Both these appeals arise out of the judgment dated 02.07.2011 of motor accident claims tribunal (the tribunal) in motor accident claim case No. 875/2010 and hence have been heard and are being decided together. The insurance company (appellant in MAC Appeal No. 1037/2011) was third respondent before the tribunal and came up with the grievance that the plea about contributory negligence on the part of the deceased (Rahul Sharma) was not considered. The claimant (Yashpal Sharma) filed cross-

objections in the course of the hearing on appeal of the insurance company, and the said objections were treated as an independent appeal (MAC Appeal No. 591/2013) whereby prayer for enhancement of the compensation has been pressed.

2. On the night of 22-23.10.2004, Rahul Sharma riding on his motorcycle bearing registration No. DL 7AB 5496 (the motorcycle) met with an accident involving collision against Maruti Car bearing registration No. DL 4CF 7803 (the offending vehicle). The driver and the owner of the offending vehicle were impleaded as first and second respondents before the tribunal and are now second and third respondents in the appeal filed on behalf of the insurance company. The offending vehicle was concededly covered against third party risk by an insurance policy taken out by the registered owner of the offending vehicle from the appellant insurance company. The motorcycle rider Rahul Sharma suffered injuries in the accident and was taken to hospital where during surgical procedure he slipped into coma. He remained comatose till he died in hospital on 9.1.2007. The claim petition had been filed during his lifetime on 8.7.2005 through his father Yashpal Sharma. On account of the death, the claim petition was converted suitably into a claim arising out of death, by the father, the sole surviving legal heir.

3. The driver, the owner of the offending vehicle and the insurance company, *inter alia*, took up the defence that the accident had occurred due to negligence on the part of the motorcycle driven by Rahul Sharma (the deceased) as he was driving the same under the influence of alcohol. One specific issue in this regard (*i.e.* issue No. 2) was also framed, the burden of proof in which regard was placed on the insurance company. Evidence was led and thereafter inquiry was concluded. The tribunal

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considered the contention of the claimant that the accident had occurred due to rash or negligent driving of the offending vehicle by the first respondent before the tribunal and not because of negligence on the part of the deceased. It accepted the evidence led by the claimant through Manjeet Singh (PW-7) and noted that neither the insurance company nor the owner of the offending vehicle had led any evidence on their behalf and, thus, the plea of negligence on the part of the deceased was rejected and the claimant was entitled to compensation on the principle of fault liability under Section 166 of Motor Vehicles Act, 1988 (MV Act).

4. The sole contention raised by the insurance company with regard to the alleged contributory negligence of the deceased cannot be accepted in the face of the above noted facts mentioned in the impugned judgment. The claimant had examined an eye witness (PW-7). Neither the driver of the offending vehicle nor the insurance company led any evidence in rebuttal. In these circumstances, the learned tribunal rightly accepted the evidence of PW-7 to return the finding that the accident had occurred due to rash/negligent driving of the offending vehicle. Merely because the charge-sheet shows consumption of some amount of alcohol by the deceased, it cannot be said that he had contributed to the negligence. In order to prove such contentions, it was the burden of the party raking up the issue to show by some evidence that the consumption of alcohol by the motorcycle rider was beyond statutory permissible limits so as to render him unfit to drive the motorcycle on public road.

5. In above view, the appeal of the insurance company is without substance and must be dismissed.

6. The tribunal concluded that the deceased was 25 year old when the death occurred. In absence of any formal prove of his earnings it adopted

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the minimum wages payable at the time of death as the benchmark and adopted the multiplier of 11 to calculate the loss of earning, the age of the solitary claimant (father) being 51 years at the time of accident. The tribunal deducted $3/4^{\text{th}}$ of the earnings towards personal and living expenses of the deceased to award compensation on account of loss of earnings noting, *inter alia*, that he was a bachelor.

7. I agree with the submission that the approach of the tribunal was erroneous. The deceased had slipped into coma on 23.10.2004. He never regained consciousness. He died in comatose state after about 26 months. For all practical purposes, for the dependent father his son Rahul Sharma virtually died on 23.10.2004. The loss of dependency, thus, needs to be calculated assuming the date of accident (23.10.2004) as the date of reckoning. The minimum wages payable to a matriculate on the date of accident were ₹ 3342/90 or ₹ 3343/-. Given the fact that deceased was bachelor and the claimant father was the solitary person dependent upon him, personal and living expenses required to be deducted to the extent of 50% rather than $3/4$. In these circumstances, the monthly loss of dependency comes to ₹ 1671/90. Adopting the multiplier of 11, the total loss of dependency, thus, comes to $(1671.9 \times 12 \times 11)$ ₹ 2,20,690/80 rounded off to ₹ 2,20,700/-.

8. The claimant father had led some evidence to show that he had paid nursing charges to the tune of ₹ 58,347/- since the deceased required services of a nurse day and night during the period of hospitalization. The tribunal was not satisfied with the said evidence, *inter alia*, on the ground that proper proof of identity of the nurses had not been disclosed. There is no denial of the fact that the deceased Rahul Sharma in comatose condition did require services of a nurse round the clock. In these

circumstances, the learned counsel for the claimant fairly conceded that the simpler method would be to calculate the expenditure towards nursing care by awarding the minimum wages payable to a skilled worker for the period of 26 months. The minimum wages payable to a single nurse in October, 2004 were ₹ 3318/90 per month. The expenditure for engaging two nurses would be ₹ 6638/- per month. Thus, compensation towards the expenditure on nursing care would come to (₹ 6638 X 26) ₹ 1,72,588/-.

9. The tribunal awarded compensation in the sum of ₹ 5,78, 275/- towards medical bills and ₹ 25,000/- towards conveyance and special diet. The tribunal further granted ₹ 10,000/- on account of loss of love & affection and ₹ 5,000/- towards funeral expenses.

10. This court agrees that the compensation under the non-pecuniary heads of loss of love & affection and funeral expenses is on the lower side. Similarly, compensation on account of loss of estate also deserves to be added.

11. Having regard to the date of accident (October, 2004), compensation in the sum of ₹ 1 lakh towards loss of love & affection, ₹ 25,000/- towards funeral expenses and ₹ 10,000/- towards loss of estate appears to be just and proper. [*Pushkar Mehra vs. Brij Mohan Kushwaha & Ors.* 2013 (14) SCALE 26; 2013 SCC Online SC 1233].

12. The total compensation payable in favour of the claimant, thus, may be summarised as under:-

Loss of dependency	₹ 2, 20, 700/-
Expenditure towards medical bills	₹ 5, 78,275/-
Expenditure towards nursing care	₹ 1, 72,588/-
Special diet and conveyance	₹ 25,000/-

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Loss of love & affection	₹ 1, 00,000/-
Funeral expenses	₹ 25,000/-
Loss of estate	₹ 10,000/-
	₹ 11,31,563/- rounded off to ₹ 11,32,000/-

13. The compensation awarded in favour of the claimant (appellant in MAC Appeal No. 591/20013) is enhanced accordingly. It shall carry interest as levied by the tribunal.

14. When the appeal of the insurance company (MAC Appeal No. 1037/2011) was entertained, by order dated 22.11.2011 it was directed to deposit ₹ 6,68, 655/- with the Registrar General of this Court in a fixed deposit initially for a period of one year to be renewed from time to time. By order dated 14.2.2013, 60 % of the deposited amount was allowed to be released in favour of the claimant. The balance is still lying in fixed deposit account in terms of the earlier order. It is noted that the tribunal did not give any directions in the impugned judgment to protect the awarded compensation in terms of the judgment in *General Manager, Kerala State Road Transport Corporation, Trivandrum, vs. Susamma Thomas (Mrs.) & Ors. (1994) 2 SCC 176*.

15. In these circumstances, the entire balance now payable to the claimant in terms of modified award shall be put in fixed deposit receipt in the name of the claimant for a period of 7 years in a nationalized bank with liberty to withdraw monthly interest therefrom.

16. The insurance company is directed to satisfy the award by depositing the balance with the tribunal within 30 days of this order. The Registrar General is directed to transfer the balance amount lying in this

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Court in terms of the earlier order to the tribunal for disbursal in terms of the above noted directions within 30 days.

17. The statutory deposit, if made, by the insurance company is refunded.

18. The tribunal's record shall be returned alongwith a copy of this judgment.

19. Both the appeals stand disposed of in above terms.


R.K. GAUBA
(JUDGE)

FEBRUARY 08, 2016

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- CM No. 8906/16 for Correction of order dt 8/2/16
- Please see Page no 11-14
- Connected with MACA 1037/11
- Item No 46

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

+ MAC.APP. 1037/2011

UNITED INDIA INSURANCE CO LTD

..... Appellant

Through: None.

versus

YASH PAL SHARMA & ORS

..... Respondents

Through: Mr. O. P. Mannie, Adv. for R-1.

AND

+ MAC.APP. 591/2013

SH YASHPAL SHARMA & ORS

..... Appellants

Through: Mr. O. P. Mannie, Adv.

versus

UNITED INDIA INSURANCE CO. LTD.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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11.03.2016

CM APPL. 8905/2016 (correction) in MAC.APP. 1037/2011 & CM APPL. 8906/2016 (correction) in MAC APP.591/2013

Heard.

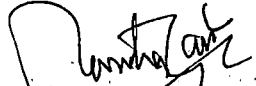
The figure "Rs.58,347/-" in second line of para 8 of the judgment dated 08.02.2016 of this court would read "Rs.5,84,379/-" as mentioned in

para 18 of the impugned judgment of the tribunal.

No good grounds to grant the future prospects as is now argued.

The correction is incorporated in the judgment dated 08.02.2016 accordingly. The registry shall upload the corrected copy of the judgment.

The applications stand disposed of.


R.K.GAUBA, J

MARCH 11, 2016/ssc