*　IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: December 09, 2016

(i) + **MAC. APP 324/2016**

KIRAN ..... Appellant

Through: Mr.Naresh Gupta, Advocate

Versus

NATIONAL INSURANCE CO. LTD. & ORS. ..... Respondents

Through: Mr. Sanjay Kumar Dubey & Ms. Suchi Singh, Advocates

(ii) + **MAC. APP 394/2016**

KANNU ..... Appellant

Through: Mr.Naresh Gupta, Advocate

Versus

NATIONAL INSURANCE CO. LTD. ..... Respondent

Through: Mr. Sanjay Kumar Dubey & Ms. Suchi Singh, Advocates

(iii) + **MAC. APP 915/2016**

RAVINDRA KUMAR SHUKLA & ORS. ..... Appellants

Through: Mr.Naresh Gupta, Advocate

Versus

NATIONAL INSURANCE CO. LTD. ..... Respondent

Through: Mr. Sanjay Kumar Dubey & Ms. Suchi Singh, Advocates

(iv) + **MAC. APP 940/2015**

NATIONAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. Sanjay Kumar Dubey & Ms. Suchi Singh, Advocates

Versus

KIRAN & ORS. ..... Respondents
Through: Mr.Naresh Gupta, Advocate

(v) + **MAC. APP 949/2015 & C.M.No. 29742/2015**

NATIONAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. Sanjay Kumar Dubey, Advocate for Ms. Suchi Singh, Advocate

Versus

KANNU & ORS. ..... Respondents
Through: Mr.Naresh Gupta, Advocate

(vi) + **MAC. APP 952/2015**

NATIONAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. Sanjay Kumar Dubey, Advocate for Ms. Suchi Singh, Advocate

Versus

RAVINDRA KUMAR SHUKLA & ORS. ..... Respondents
Through: Mr.Naresh Gupta, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
% **ORAL**

1. The above captioned six appeals are directed against common impugned Award of 5th August, 2015 vide which claimant-*Kiran*, mother of the deceased has been granted compensation of ₹16,55,640/- and two injured-*Ravinder Kumar* and *Kannu* have been granted compensation of ₹29,82,633/- and ₹11,67,014/- respectively with interest**.**

2. Above captioned first three appeals have been filed by claimants for enhancement of compensation whereas the remaining three appeals are preferred by the Insurance Company. Learned counsel for the parties submit that the question raised in these appeals are identical and so, these appeals/cross-appeals have been heard together and are decided by this common judgment.

3. The facts in brief, as noted in the impugned Award, are that on 20th August, 2013 the injured-*Ravinder Kumar* was driving a motor rickshaw in which *Ashish Kumar* (since deceased) and injured-*Kannu*, were travelling and at about 12.20 a.m. when they reached in front of Airport T-3, New Delhi, all of a sudden a Tata Tanker bearing registration No. HR-38-F-3837 driven by *Vinod Kumar Mishra* in rash and negligent manner came at a high speed and hit the motor rickshaw from the back side, as a result of which passengers in the rickshaw sustained injuries. The injured persons were removed to Jai Prakash Narayan Narayan Apex Trauma Centre, AIIMS, New Delhi where *Ashish Kumar* was declared brought dead.

4. On the basis of evidence led by the parties, the learned Motor Accident Claims Tribunal in impugned Award of 5th August, 2015 has awarded compensation while applying the multiplier of 18 in the case of claimant-*Kiran* upon taking age of deceased and not of mother of the

deceased, who was aged 42 years at the time of accident. While assessing the loss of dependency, compensation of 50% towards future prospects has been granted by the learned Tribunal in the case of claimant-*Kiran* and *Ravinder Kumar*. It is evident from the impugned Award that *Ashish*, since deceased was aged about 20 years at the time of accident and he was doing a private job and in the absence of evidence regarding his income, loss of dependency has been worked out on the basis of minimum wages. Amount of ₹7 lacs has been also granted to claimant and injured- *Ravinder Kumar* to enable him to obtain an artificial limb.

5. In the appeal filed by claimant-*Kiran,* enhancement of compensation is sought on the ground that instead of minimum wages, income of ₹15,000/- p.m. ought to have been taken into consideration as the deceased was doing clerical job in a private firm and was also pursuing graduation course and because after completion of graduation, his employment prospects would have brightened and so, the potential income of the deceased ought to have been taken into consideration. In the appeals of claimants- *Ravinder Kumar* and *Kannu,* enhancement of compensation is sought by asserting that actual income and not the minimum wages ought to be the basis for assessing loss of dependency.

6. Enhancement of compensation is sought by claimant- *Ravinder Kumar* and *Kannu* on the ground that they had suffered over all disability of 60% each and infact the functional disability is of 100% in the case of these claimants. It is pointed out by claimants' counsel that injured/claimants-*Ravinder Kumar* and *Kannu* were working as drivers prior to this road accident and now they are rendered jobless and so, the compensation awarded ought to be reasonably enhanced.

7. To seek reduction of compensation and to resist its enhancement, learned counsel for Insurer submits that in the absence of income proof, no case for enhancement of compensation is made out. It is submitted by learned counsel for Insurer that in the case of *Ravinder Kumar*, the disability suffered is considerably reduced, as compensation for obtaining artificial limb has been already awarded and if the artificial limb is obtained, then the disability would be reduced to 20% in the right hand, which had been amputated from the elbow.

8. It is next submitted by learned counsel for Insurer that claimant-*Kannu* has been granted compensation under two heads *"Loss of income"* and *"Further loss of income on account of disability"*. Compensation of ₹1,12,632/- has been given under the head *"Loss of Income"* and compensation of ₹2,02,275/- has been given under the head *"Further loss of income on account of disability",* which is unjustified as compensation under one head alone can be granted and by splitting into two heads, claimant cannot be doubly compensated.

9. It is also submitted by learned counsel for Insurer that the amount of compensation of ₹3,00,000/- granted to injured-*Kannu* on account of *'pain and suffering"* is on the higher side and it ought to be reduced to ₹2,00,000/-, as granted to injured-*Ravinder Kumar* under this Head. Regarding the future medical expenses, claimant-*Kannu* has filed an application seeking additional evidence to claim medical expenses for the period after his evidence was recorded by the trial court. Learned counsel for Insurer submits that the claim made in this application for additional evidence by claimant-*Kannu* can be considered by the Tribunal at the time of reassessment in May, 2017 and the said application is not

required to be considered while dealing these appeals. On the one hand, learned counsel for Insurer contends that compensation granted deserves to be substantially reduced whereas on the other hand, learned counsel for claimants submits that the compensation granted is quite inadequate and it deserves to be suitably enhanced. Nothing else is urged by either side.

10. Upon hearing, and on perusal of impugned Award and the evidence on record, I find that motor *rickshaw* of the deceased / injured was hit from behind and negligence has been rightly attributed to the driver of the offending vehicle. It is so said as the standard of proof in such cases is not so high as in the criminal cases. Regarding inadequacy of compensation granted, I find that there is some element of guess work while assessing compensation in such cases. However, the compensation cannot be assessed of speculation or on conjectures.

11. The parameters to grant pecuniary and non-pecuniary damages in such cases, as highlighted in *R.D. Hattangadi Vs. Pest Control (India) Pvt. Ltd.* AIR 1995 SC 755 have to be kept in mind and upon doing so, this Court finds that so far as loss of dependency in case of legal heirs of deceased is concerned, it has been worked out by learned Motor Accident Claims Tribunal while taking into account age of the deceased. Rightly so, as Supreme Court in *M. Mansoor and Anr. Vs. United India Insurance Company Limited & Anr.* (2013) 15 SCC 603 has relied upon earlier decision in *Amrit Bhanu Shali Vs. National Insurance Co. Ltd.* (2012) 11 SCC 738, wherein in a case of bachelor, it has been already held that the selection of multiplier is to be based on the age of deceased and not on the basis of age of the dependents, as there may be a number of dependants of the deceased whose age may be different and therefore, the

age of the dependents has no nexus with the computation of compensation. In this view of the matter, while calculating *"Loss of Dependency'*, learned Tribunal has rightly applied multiplier of 18 in the case of claimant- *Kiran* while taking into account minimum wages as there is no cogent evidence on record regarding actual income of deceased. No case for reduction of compensation is made out as 50% increase in income is justified in view of Supreme Court's decision in *Rajesh & Ors. V. Rajbir Singh & Ors.* 2013 (6) Scale 563.

12. Under the head *"Loss of Love and Affection"*, compensation of ₹1,00,000/- has been granted to legal heirs of deceased, which appears to be on the lower side, as compensation of ₹2,00,000/- under the head of *"Pain and Suffering"* has been granted by learned Tribunal in the case of injured- *Ravinder*, which cannot be said to be exorbitant. Grant of compensation of ₹25,000/- under the head *"Funeral Expenses"* appear to be reasonable. So far as compensation of Rs.10,000/- under the head of *"Loss of Estate"* is concerned, I find it to be on the lower side in the facts of this case. As such, it is enhanced from ₹10,000/- to ₹1,00,000/-. Accordingly, the enhanced compensation awarded to appellant- *Kiran* is as under:-

i.	*Loss of dependency (₹7040x12x18)*	*= ₹15,20,640/-*
ii.	*Loss of love & affection*	*= ₹2,00,000/-*
iii.	*For Funeral Expenses*	*= ₹25,000/-*
iv.	*Loss of Estate*	*= ₹1,00,000/-*
	Total	***= ₹18,45,640/-***

13. So far as compensation awarded to injured- *Ravinder Kumar* and *Kannu* is concerned, I find that they were drivers by profession and overall disability suffered by them is 60%. The said disability cannot be taken to be 100% because of the nature of injury suffered by them and as even if they are not able to drive, still they can do other jobs and earn their livelihood. So on this account, compensation granted to injured – *Ravinder & Kannu* cannot be enhanced.

14. As regards compensation awarded to injured- *Ravinder Kumar* is concerned, the reasoning adopted by learned Tribunal to justify the quantum of compensation under the head of *"Loss of income on account of disability"* holds good and compensation awarded under the head *"Pain and Suffering"* appears to be justified. The disability suffered by injured –*Ravinder Kumar* stands duly proved from the evidence on record. He had loss of his right hand in the accident, which has resulted in disfigurement of his body but grant of compensation on this account is unjustified because this aspect is taken care of by providing artificial limb.

15. Even if artificial limb is provided, it would still compromise the ability to effectively work and puts him in the category of handicapped person. It is no solace that this injured ought to be called *"differently abled"*. It is true that the artificial limb is provided free of cost by charitable Institutes but in view of estimate bill *(Ex. PW2/10)* from *M/S Velocity Health Care India Pvt. Ltd.,* the injured *Ravinder Kumar* has been rightly granted compensation of ₹7,00,000/- to obtain artificial limb,

which would to some extent reduce the disability. This injured cannot do the job of a driver but can do some menial job and so, loss of income due to disability suffered is rightly assessed by learned Tribunal. Even in the case of this injured, no case for reduction of compensation is made out. In the fact situation of this case, compensation of ₹50,000/- granted under the head *"Marriage Prospects"* and *"Loss of* amenities" appears to be on the lower side and is accordingly enhanced from ₹50,000/- to ₹1,00,000/- each under these two heads. Consequentially, the modified compensation payable to injured- *Ravinder Kumar* is as under:-

i.	*Medicine and treatment:*	:	*₹7865/-*
ii.	*Loss of income on account of Disability*	:	*₹18,24,768/-*
iii.	*Pain and Sufferings*	:	*₹2,00,000/-*
iv.	*Conveyance, special diet and Attendant charges*	:	*₹50,000/-*
v.	*Marriage Prospects*	:	*₹1,00,000/-*
vi.	*Artificial Limb*	:	*₹7,00,000/-*
vii.	*Loss of Amenities*	:	*₹1,00,000/-*
	Total	:	**₹29,82,633/-**

16. So far as injured *Kannu* is concerned, the compensation of ₹1,12,632/- granted to him under the head *"Loss of Income"* for the period he remained out of work is justified. Even the grant of compensation of ₹2,02,275/- under the head *"Loss of income on account of disability"* is concerned, it cannot be said to be unjustified or unreasonable as compensation granted under this head is infact under the head of "*loss of earning capacity*". Infact this injured is unable to earn his livelihood merely because the disability suffered by this injured needs

to be re-assessed next year but by that itself would not render the award of compensation under the head of "*loss of earning* capacity' to be exorbitant. So, it cannot be said that compensation awarded under the two afore-noted heads ought not to be granted. However, grant of compensation of ₹3,00,000/- under the head of *"Pain and Sufferings"* is on the higher side and it deserves to be brought in line with the amount of compensation granted to co-injured *–Ravinder Kumar*. Accordingly, compensation granted to injured- *Kannu* under the head of *"Pain and Sufferings"* is reduced from ₹3,00,000/- to ₹2,00,000/-. Regarding the claim under the head *"Future medical expenses"*, the same is left open to be considered by learned Tribunal when this injured comes for reassessment in May, 2017. Grant of compensation of ₹50,000/- under the head *"Loss of Amenities"* appears to be on the lower side and is accordingly enhanced to ₹1,00,000/-. In view of above, the modified compensation awarded to Injured- *Kannu* is as under:-

i.	*Medicine and Treatment*	:	*₹3,62,107/-*
ii.	*Loss of Income*	:	*₹1,12,632/-*
iii.	*Loss of income on account of Disability/loss of earning capacity*	:	*₹2,02,275/-*
iv.	*Pain and sufferings*	:	*₹2,00,000/-*
v.	*Conveyance and special diet*	:	*₹1,00,000/-*
vi.	*Attendant charges*	:	*₹40,000/-*
vii.	*Loss of amenities*	:	*₹1,00,000/-*
	Total	**:**	***₹ 11,17,014/-***

17. The grant of interest at the rate of 9% p.a. appears to be just and

reasonable in view of Supreme Court's decision in *Jitendra Khimshankar Trivedi & Ors. V. Kasam Daud Kumbhar & Ors.* (2015) 4 SCC 237. The method of disbursement of compensation as per this judgment will be in the same ratio as provided in the impugned Award.

18. With aforesaid modification of the impugned Award, the above captioned appeals and applications are disposed of with direction to refund the statutory deposit and excess of deposited amount, if any, to the Insurer herein.

(SUNIL GAUR)
JUDGE

DECEMBER 09, 2016
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