

\$~11, 12, 17, 18, 19 & 20

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

Date of Decision: 28th January, 2016

+ **MAC.APP. 1163/2011**

ANSHUL Appellant

Through: Mr. Ikrant Sharma, Adv.

versus

MANDEEP SHOKEEN AND ORS Respondents

Through: Mr. Murari Tiwari & Mr. Rahul
Kumar, Advs. for R-1 & 2.

Mr. K. L. Nandwani & Mr.
Sameer Nandwani, Advs. for R-3.

+ **MAC.APP. 1179/2011**

ANGAN LAL & ORS Appellants

Through: Mr. Ikrant Sharma, Adv.

versus

MANDEEP SHOKEEN & ORS Respondents

Through: Mr. Murari Tiwari & Mr. Rahul
Kumar, Advs. for R-1 & 2.

Mr. K. L. Nandwani & Mr.
Sameer Nandwani, Advs. for R-3.

+ **MACA No.19/2012**

MUKESH GARG AND ANR Appellants

Through: Mr. Ikrant Sharma, Adv.

versus

MANDEEP SHOKEEN AND ORS Respondents

Through: Mr. Murari Tiwari & Mr. Rahul
Kumar, Advs. for R-1 & 2.
Mr. K. L. Nandwani & Mr.
Sameer Nandwani, Advs. for R-3.

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MAC.APP. 1293/2012

MANDEEP SHOKEEN & ANR Appellants
Through: Mr. Murari Tiwari & Mr. Rahul
Kumar, Advs.

versus

ANSHUL & ANR Respondents
Through: Mr. Ikrant Sharma, Adv. for R-1.
Mr. K. L. Nandwani & Mr.
Sameer Nandwani, Advs. for R-2.

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MAC.APP. 1294/2012

MANDEEP SHOKEEN & ANR Appellants
Through: Mr. Murari Tiwari & Mr. Rahul
Kumar, Advs.

versus

ANGAN LAL & ORS Respondents
Through: Mr. Ikrant Sharma, Adv. for R-1.
Mr. K. L. Nandwani & Mr.
Sameer Nandwani, Advs. for R-2.

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MAC.APP. 1299/2012

MANDEEP SHOKEEN & ANR Appellants
Through: Mr. Murari Tiwari & Mr. Rahul
Kumar, Advs.

versus

ANSHUL & ANR Respondents

Through: Mr. Ikrant Sharma, Adv. for R-1.
Mr. K. L. Nandwani & Mr.
Sameer Nandwani, Advs. for R-2.

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

JUDGMENT

R.K.GAUBA, J (ORAL):

1. On 12.12.2008 at about 12:50 AM at Tri Nagar, Road no.37, near Kanhaiya Nagar, Delhi, an accident occurred involving two motor vehicles, viz. a maruti car bearing registration no.DL-2C-AG-3179 (hereinafter referred to as “the car”) and a scorpio jeep bearing registration no.DL-8CJ-5582 (hereinafter referred to as “the jeep” or “the offending vehicle”). The car, at the time of the collision, was driven by Rakesh Garg. His wife Uma and two sons Mukul and Rishabh were travelling with him. The passengers in the car also included Tanvi, daughter of Mukesh Garg (brother of Rakesh Kumar). The jeep, the vehicle admittedly owned by Braham Prakash, on the other hand, was statedly driven by his son Mandeep Shokeen. As a result of the collision Rakesh, Uma, Mukul, Rishabh & Tanvi suffered injuries and died in the consequence.

2. Five claim petitions under Section 166 read with Section 140 of Motor vehicles Act, 1988 (“the MV Act”) came to be filed, they having been registered as MACT case nos.178/09, 180/09, 181/09, 182/09 & 183/09. In each of said claim cases, presented before the motor accident claims tribunal (“the tribunal”), Mandeep Shokeen and his father

Braham Prakash were impleaded as the first and second respondent respectively.

3. Concededly, the jeep was insured with Reliance General Insurance Company against the third party risk and, thus, the insurer was impleaded as third respondent in each claim case.

4. The claim cases were contested by the said second respondent (hereinafter referred to as “the owner of the offending vehicle”) on the plea that the jeep was driven not by his son Mandeep Shokeen but by one Vijay Singh who was holding a valid license.

5. The claim cases were inquired into by the tribunal and decided by separate judgments passed on 30.09.2011.

6. It is submitted by the learned counsel for both sides at bar, at the hearing on these appeals, that the evidence adduced before the tribunal was commonly led. The pleadings with regard to the involvement of the jeep and, particularly of the driver (first respondent in claim petition) were common in each case. The tribunal, by identical reasoning set out in each judgment, rejected the contention and evidence adduced by the owner of the offending vehicle about the jeep having been driven by Vijay Singh rather than by his son Mandeep Shokeen. The findings to the effect that the accident had occurred due to rash/negligent driving on the part of Mandeep Shokeen were returned thus holding him to be the principal tort-feasor and consequently holding his father Braham Prakash (owner of the offending vehicle) vicariously liable. Since Mandeep Shokeen was admittedly a minor – his age is stated by his counsel to be 16 years old at the relevant point of time - the tribunal held

that there was breach of conditions of the insurance company and, thus, absolved the insurer of any liability.

7. On the basis of material placed on record with regard to the age, proof of avocation and income, and the dependency loss, compensation was awarded in favour of the claimants in each case.

8. On account of death of Rakesh Kumar, his parents and third son Anshul were awarded compensation in the sum of ₹9,28,818/-. On account of death of Uma, her son Anshul was awarded compensation in the sum of ₹9,82,250/-. On account of death of Mukul and Rishabh, their surviving brother Anshul was awarded ₹2,59,200/- and ₹50,000/- respectively as compensation.

9. In each case, interim awards on the principle of no fault liability in the sum of ₹50,000/- had been earlier granted in the claim petitions under Section 140 of MV Act. While passing the final awards, the tribunal directed the said amounts of ₹50,000/- that had been earlier paid, to be adjusted against the amounts now made payable. It may be added here that said interim award were honoured at that stage by the insurance company. Since, in final reckoning, it was held not liable to pay on account of breach of the policy condition, the insurer has been granted the right to recover the same from the principal tort-feasor and the person held vicariously liable, jointly and severally.

10. The claimants of the four above mentioned cases (respecting deaths of Rakesh, Uma, Rishabh and Tanvi) felt aggrieved with the amounts of compensation awarded. They came by way of separate appeals under Section 173 of the MV Act to this court seeking

enhancement. It may be added here that the MAC Appeal no.1161/11 seeking enhancement of compensation on account of death of Uma, as granted in MACT case no.180/09, however, has been withdrawn by the said appellant/claimant.

11. The persons held liable (Mandeep Shokeen and Braham Prakash) have also felt aggrieved against the direction to pay compensation contending that the findings returned by the tribunal in these cases holding Mandeep Shokeen to be the driver and not accepting the evidence that the jeep was driven by Vijay Singh are perverse and against the record. It has further been submitted that since Vijay Singh was holding a valid driving license, the insurance could not have been absolved from its liability under the insurance policy. Thus, MACA no.1293/12 (in case of death of Uma), MACA no.1294/12 (in case of death of Rakesh), MACA no.1299/12 (in case of death of Mukul) were filed seeking the judgments of the tribunal to be set aside in so far as the findings were returned against the contention of Vijay Singh being the driver of the jeep and absolving the insurance company of its liability.

12. The arguments on all sides have been heard and the records have been perused.

13. As noted earlier, per the submission of counsel on all sides, the contention of the parties herein and the evidence led thereupon was common and has received similar consideration by the tribunal in the impugned judgments. During the arguments, learned counsel referred to the judgment of the tribunal in claim case no.181/09 respecting the death of Rakesh, treating it as the lead case.

14. The relevant portion of the judgment of the tribunal on the question of liability of the owner of the offending vehicle and his son has been discussed in (paragraph nos.25 to 28 of) the said judgment which may be extracted as under:-

“ It is submitted by counsel for R1 and R2 that R1 has been falsely implicated by the police while one Sh. Vijay Singh was driving the vehicle. He further submits that R2 Sh. Brahm Prakash has filed his affidavit to prove this fact. It is further submitted that one Mohd. Alam was the eye witness of the case and was examined before Juvenile Justice Board who has not identified the driver of the offending vehicle. Certified copy of statement of Mohd. Alam recorded before Juvenile Justice Board has been filed. It is further submitted that the said Vijay was having DL Ex. RWI/1 and therefore, R1 and R2 are not liable to pay compensation.

I considered the submission of counsel for R1 and R2 has submitted above. Certified copy of criminal record has been filed. It is revealed from the record that offending vehicle was found at the spot by the police and taken into possession. It is also revealed that driver of the offending vehicle had fled away from the spot leaving the offending vehicle at the spot. It also revealed that notice U/s 133 of M.V. Act was given to Sh. Brahm Prakash on 12.12.08 and R2 has given in writing that his son Mandeep Shokeen had taken the vehicle Scorpio No. DL-8CJ-5582 on 11.12.08 and accident had taken place. He had also informed that his son was driving the offending vehicle at the time of accident and he had also produced Mandeep Shokeen on 13.12.08 before the police. Mandeep Shokeen-R1 was arrested by the police and was medically examined on 14.12.08 in Bhagwan Mahavir hospital. On his examination, Dr. found multiple old small abrasion over his left hand, over right knee and swelling on right foot. It shows that Sh. Mandeep Shokeen -R1 had sustained injuries in the accident. If R1- Mandeep Shokeen had not been driving the offending vehicle on the date of accident and one Sh. Vijay had been driving the same, R2 owner of the offending vehicle would have produced said Vijay as the driver of the offending vehicle in response to notice given U/s 133 of M.V. Act

and not Sh. Mandeep Shokeen. R2 had voluntarily given in writing that his son was driving the offending vehicle on the date of accident. His signature on the notice U/s 133 of M.V. Act and on the foot of his writing and his affidavit filed in the court and on the cross examination recorded on 15.02.11 are similar. The plea taken by R2 before this tribunal later is false. If eye witness Mohd. Alam had not identified Sh. Mandeep Shokeen during trial before Juvenile Justice Board, it does not mean that he was not driving the offending vehicle at the time of accident since immediately after the accident, persons who were in the offending vehicle i.e. Scorpio fled away from the spot leaving the vehicle there and it was not possible for Mohd. Alam to see them properly and he was not in a position to identify Sh. Mandeep Shokeen during trial. Therefore, I do not agree with the submissions of counsel for R1 and R2 that since Mohd. Alam had not identified Mandeep Shokeen in the trial before Juvenile Justice Board, so he was not driving the offending vehicle on the date of accident.

R-2 has stated in his affidavit that son of deponent (R-2) was falsely implicated by the police under the pressure of media. I fail to understand as to why police was interested to falsely implicate, Mandeep Shokeen-R1, son of deponent-R2. No reason has shown by R1 and R2 to prove the fact that police was interested to falsely implicate the son of deponent. Even if it is accepted that police was under pressure to solve the case, why R2 had not produced said Vijay Singh before the police in response to notice U/s 133 of M.V. Act and why he had produced his son before them. There is no allegation on behalf of R2 that he was forced to give statement in writing that his son was driving the vehicle at the time of accident. He had given in writing that his son was driving the offending vehicle at the time of accident. Therefore, it can not be accepted that R1 was falsely implicated by the police under any pressure. R2 had given in writing before the police in response to notice u/s 133 of M.V. Act that his son Mandeep Shokeen was driving the offending vehicle at the time of accident and his son had taken the offending vehicle in his absence, while during cross-examination, he has stated that on the day of accident Sh. Vijay Singh had taken the vehicle. It shows that he has falsely stated so just to avoid liability to pay

compensation. In my view, his testimony is false and cannot be believed.

In the light of discussions and reasons therein. I hold that R1 was driving the offending vehicle on the date of accident and not one Vijay Singh as claimed by R1 and R2. Since R1 was minor and offending vehicle was being driven by him without DL, I am of the view that R1 and R2 are jointly and severally liable to pay compensation and R-3 is not liable to pay any compensation. This issue is decided accordingly. ”

15. The learned counsel for the appellants in MACA nos. 1293-1294 and 1299 of 2012 was at pains to argue that the evidence was not properly appreciated by the tribunal while recording the above views. He sought to point out that Mukesh Garg, father of Tanvi (claimant in MACT case no.182/09) had submitted a complaint to DCP (North-West) on 19.12.2008, *inter-alia*, stating that the jeep at the time of the accident was driven by a person who was adult and under the influence of alcohol. He referred in this context to a copy of such purported complaint (at page 70 of the paper book) in MACA no. 1293/12. He further argued that Agan Lal, father of Rakesh Kumar, one of the claimants in MACT case no.181/09, had preferred a criminal complaint under Section 200 of Code of Criminal Procedure, 1973 (“Cr.P.C”) in the court of Chief Metropolitan Magistrate, Rohini in May 2009 alleging that offences punishable under Section 279/304/304-A of Indian Penal Code, 1860 (“IPC”) had been committed impleading Braham Prakash (the owner of the offending vehicle) and one Mukesh, nephew of Braham Prakash as the prospective accused, *inter-alia*, alleging the accident had been caused by the jeep at the time when it was driven by said Mukesh, nephew of Braham Prakash. A copy of the said purported

criminal complaint is available (page nos.62 to 69 of the paper book) in file of MACA no.1293/12.

16. The argument of the counsel for Mandeep Shokeen and Braham Prakash essentially is that the abovenoted material, though submitted on the file of the each of claim cases before the tribunal, was overlooked and not considered in the impugned judgment. On being asked, the learned counsel, however, fairly conceded that the criminal complaint of May 2009 purportedly preferred by Agan Lal did not result in any further action in the nature of Braham Prakash or the person named Mukesh being summoned as accused for the offences punishable under Sections 279/304/304-A IPC. He would not know whether any pre-summoning inquiry was held or whether any evidence was adduced at the stage of said pre-summoning inquiry into the said complaint under the provisions of Sections 200/202 Cr.P.C, at any stage.

17. The learned counsel, on being further asked, conceded that no evidence to prove the purported complaint dated 19.12.2008 of Mukesh or the purported criminal complaint of May 2009 in the name of Agan Lal was adduced during the inquiries before the tribunal into the claim petitions. If this were the position, it does not lie in the mouth of the appellants in MACA nos.1293-1294 and 1299 of 2012 to contend or argue that the evidence on their behalf has been overlooked. When no evidence worth the name was submitted in accordance with law, no perversity can be alleged.

18. It is further conceded that aside from the word of Braham Prakash at the inquiry that the claim that vehicle was driven by Vijay Singh, and not Mandeep Shokeen, does not find support from any further material.

The acquittal of Mandeep Shokeen by the Juvenile Justice Board where he was prosecuted on the charge for offences punishable under Sections 279/304-A IPC in the corresponding criminal case is inconsequential. It may be that the eye witness Mohd. Alam relied upon by the investigating police and prosecution in the said case was unable to identify Mandeep Shokeen as driver of the offending vehicle at the time of accident. But, his mere inability cannot mean that Mandeep Shokeen has proved conclusively that he was not the driver.

19. Neither Mukesh nor Agan Lal whose purported complaints were adduced during the inquiry before the tribunal, were present at the scene at the time of accident. Thus, they were not in a position to say that the vehicle in question was driven by a person other than Mandeep.

20. As observed by the tribunal in the impugned judgments, the revelation as to the involvement of Mandeep Shokeen as the driver of the offending vehicle was made by no one but Braham Prakash, the owner of the offending vehicle himself. He made a submission to this effect in writing under his own signatures in answer to the notice which was served upon him by the investigation police in the corresponding criminal case under the provision of Section 133 of MV Act. Braham Prakash has not explained in any manner the said report to the police. In these circumstances, he cannot now be allowed to wriggle out of the said admission that his own minor son was at the wheels of the offending vehicle at the time it met with an accident causing the aforementioned five deaths.

21. For the foregoing reasons, the arguments on behalf of appellants in MACA no.1293-94 and 1299 of 2012 are devoid of substance and must be rejected.

22. The claimants in MACT case no.181/09 respecting the death of Rakesh Kumar are in appeal MACA no.1179/11 only on the question of computation of loss of dependency. The submission of the counsel on their behalf is that the deceased was engaged in embroidery business with his wife Uma (also deceased) and though in the case of Uma income has been assessed in the sum of ₹1,36,750/- per annum, income of Rakesh Kumar has been assessed in the sum of ₹1,01,980/-.

23. On perusal of the record, it is found that the claimants in the case at hand themselves pleaded that the deceased Rakesh Kumar was earning ₹1,01,980/- per annum. This was supported by the income tax return for the assessment year 2006-07, immediately preceding the death. The tribunal has accepted not only the pleading in the claim petition but also the evidence submitted in its support. It does appear that income shown in the income tax return for the assessment year 2005-06 was on higher side. But then, there seems to be a fluctuation in income in as much as in the income tax return for the assessment year 2004-05 the income was much lower. In these circumstances, when the claimants themselves pleaded the income which has been accepted, grievances cannot be allowed to be raised. There is, thus, no case made out for any enhancement in the said matter.

24. The claimants in the case of death of Rishabh in MACA no.1163/11 seek enhancement on the ground that the award in the lump

sum of ₹50,000/- was deficient. It is also submitted that the finding that there was no loss of dependency is perverse.

25. Rishabh was 11 years old when he died. The claim petition was filed by his elder brother Anshul who was 19 years old at the time of death. Indeed, both the deceased and the claimant were themselves still students and dependant on their father, Rakesh Garg who along with his wife died in the same accident. No evidence was adduced to prove the academic record of Rishabh or to show his prospective income in future. An elder brother cannot concededly be treated as dependant on the junior sibling (deceased) even in the future for financial support. While there is no scope for any further compensation to be awarded on the score of dependency, there is a case made out for enhancement in the non-pecuniary damages on account of loss of love & affection and funeral expenses which were not awarded. Given the facts and circumstances, further compensation in the sum of ₹25,000/- each on the said two counts deserves to be awarded. Ordered accordingly.

26. The compensation in the case of death of Rishabh, thus, stands increased from ₹50,000/- to ₹1,00,000/-, with interest as levied by the tribunal.

27. In the case of death of Tanvi, the claimants in MACT case no.182/09 are in MACA no.19/12 mainly to argue that the evidence as to her engagement as a teacher in private institute has been wrongly rejected.

28. The tribunal dealt with the issue in (paragraph nos.21 to 23 of) the judgment in MACT case no.182/09 as under:-

“It has been claimed in the petition that deceased Tanvi was teacher in private institution and was earning ₹3000/- per month. In his affidavit, his father Mukesh Garg has stated that deceased was unmarried and was working as private teacher in computer centre and was getting ₹3000/- per month. Neither in the claim petition nor in the affidavit of Mukesh Garg has been mentioned as to where deceased was serving as teacher. Even the name and address of the employer of the deceased has also not been mentioned in the petition or in the affidavit of Mukesh Garg. Certificate regarding employment and salary of deceased Tanvi has been filed on 13.10.2010. I fail to understand if deceased was working with CCMT and was getting ₹3000/- per month from August 2008 why this fact was not mentioned in the claim petition in the column of name and address of employer and why this fact was not mentioned in the affidavit of Sh. Mukesh Garg her father. Moreover, why this certificate was not filed with the claim petition. Moreover, no one has been examined on behalf of the petitioners from CCMT to prove the fact that such certificate was issued.

In view of the above discussions and reasons therein, I am of the view that certificate Ex.PW1/9 is a procured document after filing the petition and the same has also not been proved. Therefore, it is held that petitioners have failed to prove the fact that deceased Tanvi was working as private teacher and was earning ₹3000/- per month.

It has come during cross-examination of PW Mukesh that her daughter was studying through correspondence from Delhi University. In view of my finding that deceased was not working as private teacher and was earning nothing, I am of the view that she was only student and was financially dependent upon the petitioners at the time of accident. In case, she would have married, she would have been dependent on her husband. In my view, petitioners cannot be held to be financially dependent on the deceased and therefore, I am of the considered opinion that there is no loss of dependency towards them. Therefore, petitioners are not entitled to compensation on account of loss of dependency. However, they are entitled to the loss of estate. Loss of estate is computed by taking of the savings of the deceased and the quantum of savings can be taken as 1/3 of the income of the deceased. In the present case, since deceased was earning nothing and was rather financially dependent upon the petitioners, loss of estate comes to nil. At the most, petitioners are entitled to compensation only of ₹50,000/- in

view of case law namely Manjuri Bera vs. OIC and Anr. (supra). Therefore, an award of ₹50,000/- is passed in favour of petitioners. ”.

29. Whilst this court agrees that salary certificate of the private institute cannot be accepted as good evidence, particularly as there was no foundation led in the pleadings about the said earnings of Tanvi, it is not correct to say that there was no loss of dependency. In case of *Manjuri Bera vs. Oriental Insurance Company*, (2007) 10 SCC 643 referred to, by the tribunal in the afore-extracted observations, compensation had been claimed by a married daughter not dependent on the deceased. The fact situation at hand is different. Tanvi was 17 years old at the time of accident. She was a student and would have evolved into a self-reliant woman to be gainfully employed. It is true that there was no formal evidence led as to her academic track record. The evidence showing that she was pursuing a corresponding degree course from Delhi University, however, indicates that she was aspiring to become a useful member of the family. Assuming that she would have secured some employment and started earning so as to contribute to the family income and further assuming that, in due course, she would have got married, there was indeed a loss of some dependency.

30. The claim was filed by parents of Tanvi. Assuming that she would have been in a position to earn minimum wages payable to a matriculate after she had turned 21, her notional income is assessed ₹8,528/- per month as was prevalent *w.e.f* 01.04.2012. After deducting 50% on account of personal and living expenses, the loss of dependency comes to ₹4,264/- per month. Applying the multiplier of 4, the total loss of dependency is calculated at ₹2,04,672/-, rounded off to ₹2,05,000/-. To this, non-pecuniary damages on account of love & affection and

funeral expenses at ₹25,000/- each deserve to be added on the same lines as held in the case of death of Rishabh.

31. Thus, the total compensation payable in the case of death of Tanvi is worked out to ₹2,55,000/-. Awarded accordingly, with interest as levied by the tribunal.

32. Needless to add that the amounts of ₹50,000/- as already received by the claimants under the principle of no fault liability would have to be adjusted. The amounts, if paid – received in terms of the impugned judgment shall also be suitably adjusted.

33. In the result, MACA nos.1293/12, 1294/12 & 1299/12 of Mandeep Shokeen and Braham Prakash and MACA no.1179/11 of Agan Lal and others are dismissed.

34. The other appeals, MACA nos.1163/11 and 19/12, stand disposed of in above terms.

35. It is stated by the learned Counsel for the claimants and the driver/registered owner of the offending vehicle that in terms of some interim orders passed in these appeals, 50% of the amount awarded by the tribunal in the impugned judgment has already been paid. The persons held liable shall pay the balance in terms of the above directions within 30 days of this order.

36. The interim orders passed in these appeals are vacated.

37. The claimants are at liberty to take out appropriate execution proceedings before the tribunal.

**R.K. GAUBA
(JUDGE)**

JANUARY 28, 2016/ssc