

\$~R-304 & 305

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

Decided on: 10th October, 2017

+ **MAC APPEAL No. 161/2011**

RAJ KUMAR MALIK Appellant

Through: None.

versus

UNITED INDIA INSURANCE CO. LTD. & ORS.

..... Respondents

Through: Mr. Priyadarsi Acharya for Mr.
K.L. Nandwani, Adv. for R-1.

+ **MAC APPEAL No. 162/2011**

NISHA & ORS. Appellants

Through: None.

versus

UNITED INDIA INSURANCE CO. LTD. & ORS.

..... Respondents

Through: Mr. Priyadarsi Acharya for Mr.
K.L. Nandwani, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. On 12.06.2006, a motor vehicular accident took place involving two vehicles, one Chevrolet Tavera (SUV) bearing registration no. DL 1CJ 4092 and, the other, a bus of the Delhi Transport Corporation

(DTC) bearing registration no. DL PA 3037. Several persons suffered injuries including Raj Kumar Malik and Rajiv Chopra, the latter having died. Ten accident claim cases came to be instituted on 19.07.2008 before the motor accident claims tribunal one of which (suit no. 334/2008) was filed by Raj Kumar Malik (appellant in MAC Appeal 161/2011) seeking compensation for the injuries suffered by him and another (suit no. 330/2008) by the wife and other members of the family of Rajiv Chopra seeking compensation on account of his death. The cases were clubbed by the tribunal for inquiry and decided by a common judgment dated 20.04.2010. By the said judgment the tribunal upheld the claim that the accident had occurred due to negligence on the part of driver of DTC bus holding him responsible as the principal tortfeasor and the DTC as the entity vicariously liable. The United India Assurance Company Ltd. (the insurer) which had issued an insurance policy at the instance of DTC in respect of the bus to cover the third party risk for the period in question was held liable to indemnify.

2. In the case of Raj Kumar Malik, the tribunal awarded compensation in the total sum of Rs. 12,05,488/- and directed the insurer (first respondent in these appeals) to pay the same with interest, the said amount inclusive of Rs. 3,00,000/- for loss of amenities, comfort, conveyance etc., Rs. 1,00,488/- for loss of leave salary, Rs. 6,00,00/- for prosthetic limb, Rs. 1,70,000/- for maintenance of artificial limb, Rs. 10,000/- towards conveyance & special diet and Rs. 25,000/- towards attendant charges.

3. In the case on account of death of Rajiv Chopra, the tribunal awarded total compensation in the sum of Rs. 15,13,894/-, the said amount inclusive of Rs. 14,73,894/- towards loss of dependency, Rs. 10,000/- each towards loss of consortium and Funeral expenses and Rs.20,000/- towards loss of love & affection.

4. These appeals were filed by the respective claimants in the said two cases seeking enhancement. They were put in the category of 'regulars' by order dated 10th May, 2011. Though they were taken up on certain dates thereafter for exploring the possibility of amicable settlement, such settlement could not be achieved. When they are taken up in their turn there is no appearance on behalf of the appellants. The cases have been considered with the assistance of the learned counsel for the first respondent (insurer) and by perusal of the respective records of inquiry before the tribunal.

5. In the case of Raj Kumar Malik (appellant in MAC Appeal No. 161/2011) it is noted that by evidence he had proved that his right upper limb below elbow had to be amputated. The tribunal while awarding compensation ignored the disability certificate (Ex.PW-5/13) issued by Guru Gobind Singh Govt. Hospital, New Delhi, confirming him to be permanently disabled to the extent of 74% in relation to the said upper limb. No compensation for loss of earning capacity in future has been awarded presumably because the claimant did not suffer any immediate loss of employment. The evidence would show that the appellant was a government servant employed in the Cabinet Secretariat of Govt. of India at a salary of Rs. 12,651/- per month on the date the accident occurred. The evidence would also

show that he continued to be in service of the Government inspite of such physical handicap which is permanent in nature. But then, it has to be remembered that as a government servant he would superannuate on attaining the age of 60 years. Loss of earning capacity post retirement had to be considered by the award of compensation and for such purposes, the tribunal could adopt the multiplier of 9. In such calculation, however, it would also need to be kept in mind that the claimant would have earned 50% of the last emoluments drawn as pension and thus the consequent functional disability will have to make up for the loss against the balance.

6. Having regard to the above facts, the notional income after factoring in the element of future prospects of progressive rise in income is taken as $(12651 \times 150 \div 100)$ Rs. 18976.5, rounded off to Rs. 19,000/-. The pension to the extent of 50% would come to $(19000 \div 2)$ Rs. 9500/-. Having regard to the percentage of loss of earning capacity as indicated against the third entry in second part of the first schedule appended to Employees Compensation Act, 1923, the functional disability is taken as 70%. Thus, the loss of earning capacity due to permanent disability is computed as $(9500 \times 70 \div 100 \times 12 \times 9)$ Rs. 7,18,200/-.

7. There is no case made out for any modification of the award under the other heads. Thus, the compensation in favour of Raj Kumar Malik (appellant in MAC Appeal No. 161/2011) is increased by Rs. 7,18,200/- (rupees seven lacs eighteen thousand and two hundred only). It shall carry interest as levied by the tribunal. It is directed that it shall be paid to him in the form of interest bearing

fixed deposit receipt to be taken out from a nationalized bank in his name for a period of ten years with right to draw periodic interest.

8. The claimants in the case of death of Rajiv Chopra have expressed grievance by their appeal primarily for the reason that there was no element of future prospects of increase factored in. This grievance is found to be correct. The claimants had proved income-tax returns (ITRs) for the assessment years 2007-2008 (Ex.PW-2/2) and 2008-2009 (Ex.PW-2/1), the first indicating gross total income of Rs. 98,682/- and other of Rs. 1,09,310. There was irrefutable evidence of progressive rise in income, and thus the element of future prospects of increase cannot be denied [see judgment dated 28.03.2016 in MAC.APP. 548/2013 *United India Insurance Co. Ltd. v. Kamla & Ors.*].

9. Since the deceased was 25 years old on the relevant date, such increase on account of future prospects will have to be to the extent of 50%. The tribunal took Rs. 1,09,310/- as the last income which had been proved. Upon the element of future prospects being added and after deduction of 1/4th towards personal & living expenses, there being four claimants, applying the multiplier of 18, the loss of dependency is re-calculated as $(109310 \times 150 \div 100 \times 3 \div 4 \times 18)$ Rs. 22,13,527/-, rounded off to Rs. 22,14,000/-.

10. It is noted that the awards under the non-pecuniary heads of damages are highly deficient. Following the view taken in *Rajesh & Ors. v. Rajbir Singh & Ors.*, (2013) 9 SCC 54 and *Shashikala V. Gangalakshamma* (2015) 9 SCC 150, compensation in the sum of Rs.1,00,000/- each on account of loss of love & affection and loss of

consortium and Rs. 25,000/- each towards loss of estate and funeral expense are added. Thus, the total compensation comes to (22,14,000+ 1,00,000 + 1,00,000 + 25,000 + 25,000) Rs. 24,64,000/- (rupees twenty four lacs and sixty four thousand only). The award is modified accordingly. It shall carry interest as levied by the tribunal.

11. Having regard to the dispensation in favour of other claimants, it is directed that the entire enhanced portion of the award shall fall to the share of the first appellant Nisha (widow) alone, for it to be released to her in the form of interest bearing fixed deposit receipts taken out in a nationalized bank for a period of ten years with right to draw periodic interest.

12. The first respondent (insurer in both these appeals) is directed to satisfy the awards, as modified above, in each case, by requisite deposits with the tribunal within thirty days.

13. The appeals are disposed of in above terms.

R.K.GAUBA, J.

OCTOBER 10, 2017

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