

\$~ 18,19 & 20 (*common order*)

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

Decided on: 11th July, 2017

+ MAC.APP. 287/2017 and CM APPL.11202-11203/2017

SHRIRAM GENERAL INSURANCE CO LTD..... Appellant

Through: Ms. Meenakshi Midha, Advocate with
Mr. Kapil Midha, Advocate

versus

BHUPENDER & ORS Respondents

Through: Mr. Dilawar Singh, Advocate for R-1.

+ MAC.APP. 291/2017 and CM APPL.11379-11380/2017

SHRIRAM GENERAL INSURANCE CO LTD..... Appellant

Through: Ms. Meenakshi Midha, Advocate with
Mr. Kapil Midha, Advocate

versus

SURENDER SINGH & ORS Respondents

Through: Mr. Dilawar Singh, Advocate for R-1
& R-2.

+ MAC.APP. 294/2017 and CM APPL.11390-11391/2017

SHRIRAM GENERAL INSURANCE CO LTD..... Appellant

Through: Ms. Meenakshi Midha, Advocate with
Mr. Kapil Midha, Advocate

versus

ASHOK KUMAR & ORS Respondents

Through: Mr. Dilawar Singh, Advocate for R-1
& R-2.

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

JUDGMENT (ORAL)

1. On 25.08.2012, a motor vehicular accident took place involving two vehicles one being tanker bearing registration no.HR-47C-0065 (described as the offending vehicle), the collision having taken place on account of its rash driving, the other vehicle being Alto car bearing registration no.DL-9CS-8213 (the car), the offending vehicle concededly insured against third party risk for the period in question with the appellant insurance company. Three persons travelling in the car, they being Vishal Rajput, Harender Singh and Bhupinder suffered injuries, the first two dying in the result and the last suffering injuries which have rendered him permanently disabled. The parents of the two deceased persons, and the injured Bhupinder, took out accident claim proceedings (MACP No.417/12/2014, 416/12/2014 and 415/12/2014) impleading, among others, the driver, owner and the insurer of the offending vehicle.

2. The three claim cases were clubbed together for inquiry and were decided by common judgment dated 24.10.2016 of the Motor Accident Claims Tribunal (the tribunal). The case of the claimants about negligent driving of the offending vehicle being the cause of action was upheld. This finding has attained finality as it was never challenged. The insurance company (the appellant) was fastened with the liability to pay the compensation which it concedes though its plea

of there being breach of terms and conditions of the insurance policy was also upheld and it was granted rights to recover.

3. By the appeals at hand, however, the insurance company questions the computation of compensation in the three cases referred to above.

Vishal Rajput, one of the persons who died was born on 10.09.1993, Harender, the other person, who died was borne on 14.07.1992. Thus, on the date of accident they were 21 years and 20 years respectively. They were, however, bachelors, the claim for compensation having been brought by their respective parents. The tribunal applied the multiplier of '18', going by the age of the deceased persons. This obviously was not correct. It is the loss of dependency which had to be compensated and, for this, the age of the claimants would regulate the choice of multiplier in these cases, it being higher. [*Kerala State Road Transport Corporation V. Susamma Thomas (1994) 2 SCC 176* and *U.P.S.R.T.C. vs Trilok Chandra (1996) 4 SCC 362*].

4. In case of death of Vishal Rajput, photo copy of the ration card (page 473 of the tribunal's record) indicates the year of birth of father and mother as 1956 and 1960 respectively. This would mean, the first claimant was 56 years old on the relevant date and the second claimant was 52 years old on the relevant date. The average age being 54 years, the calculation will have to be made with the multiplier of 11.

5. In case of Harender, copy of the ration card (Ex.PW-1/2) shows the year of birth of father and mother as 1954 and 1962 respectively. This would mean they were 58 and 50 years old. The average age again being 54 years, the dependency loss has to be worked out with the multiplier of 11.

6. In case of death of Harender, and injuries on Bhupinder, the tribunal adopted the minimum wages of Rs.8528/- per month as the assumed income, this being the minimum wages for a matriculate person on the relevant date, there being no formal proof of actual income. Strangely, in identically placed case of the death of Vishal Rajput, on mere production of the document purporting to be a salary certificate issued by private entity, the income was assumed to be Rs.14,800/- per month. Since no formal evidence was adduced, such unsubstantiated document could not have been the basis of calculation. In these circumstances, the compensation even in case of death of Vishal Rajput has to be worked out similarly at minimum wages of Rs.8528/- per month.

7. The tribunal has added the factor of future prospects in each case increasing the assumed income by 50%. There being no clear evidence as to even the nature of engagement much less about it being a regular employment with periodic rise of income, future prospects could not have been added. (See: *Sunil Kumar v. Pyar Mohd.*, MAC Appeal No. 956/2012, decided by this court on 22.01.2016). In these circumstances, the element of future prospects is kept out.

8. Since Vishal Rajput and Harender were bachelors, 50% is deducted on account of their personal and living expenses. The dependency loss on the multiplier of 11, thus, comes to $(8528/- \div 2 \times 12 \times 11)$ 5,62,848/- rounded off to Rs.5,63,000/- in each case.

9. The non-pecuniary damages in the total sum of Rs.2,25,000/- as awarded by the tribunal are added and, thus, the total compensation comes to $(5,63,000/- + 2,25,000/-)$ Rs.7,88,000/-.

10. In case of Bhupinder, the breakup of the compensation awarded under various heads is indicated as under:-

S. No.	Heads	Amount (in Rupees)
1.	Pain & suffering	75,000/-
2.	Conveyance & special diet	41,000/-
3.	Attendant charges	18,000/-
4.	Medicines and Treatment	2,73,455/-
5.	Loss of income	51,150/-
6.	Future loss of earning	4,42,152/-
7.	Loss of enjoyment of life and amenities	50,000/-
8.	Future treatment	50,000/-

11. The error in the future loss of earning is on account of inclusion of the element of future prospects. It is noted that the tribunal found on the basis of evidence the claimant to have suffered functional disability to the extent of 16%. Since age of the claimant on the relevant date was 19 years, the loss of future income due to disability has to be worked out on the multiplier of 18. Thus, future income loss

is calculated as $(8528/- \times 16/100 \times 12 \times 18)$ Rs.2,94,727.68 rounded off to Rs.2,95,000/-.

12. The insurance company also takes exception to award of Rs.50,000/- on account of future treatment expenses. Having regard to the nature of injuries and the consequences suffered which would be permanent, this award cannot be grudged. The total compensation in favour of Bhupinder comes to $(75,000/- + 41,000/- + 18,000/- + 2,73,455/- + 51,150/- + 2,95,000/- + 50,000/- + 50,000/-)$ Rs.8,53,605/- rounded off to Rs.8,54,000/-.

13. In above view, the awards in the case of deaths of Vishal Rajput and Harender are reduced to Rs.7,88,000/- to the respective claimants and the award for injuries suffered by Bhupinder is reduced to Rs.8,54,000/-.

14. This court agrees with the submission that the rate of interest awarded @ 10% per annum is on the higher side. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*], the rate of interest is reduced to 9% per annum from the date of filing of the petition till realization.

15. The awards stand modified accordingly.

16. In terms of the interim orders passed on 22.03.2017, the insurance company was expected to deposit the entire awarded amounts with the tribunal. It appears it has failed to comply with the above directions. It shall now deposit the amounts in terms of the

modified award with the tribunal positively within thirty days of today, whereupon the same shall be released to the respective claimants.

17. It is made clear that this does not disturb the findings giving rise to the right to the insurance company to recover as directed by the tribunal.

18. The statutory amount, if deposited, shall be refunded to the appellant insurance company after satisfaction of the awards.

19. Tribunal's record shall be returned forthwith.

JULY 11, 2017

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R.K.GAUBA, J.