

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

Date of Decision: July 10, 2018

+ **MAC.APP. 106/2016**

RELIANCE GENERAL INSURANCE CO LTD. Appellant

Through: Mr. Arun Yadav, Advocate

Versus

AFSANA & ORS. Respondents

Through: Mr. S.N.Prashar & Ms.Pankaj
Kumari, Advocates

+ **MAC.APP. 181/2016**

RELIANCE GENERAL INSURANCE CO LTD. Appellant

Through: Mr. Arun Yadav, Advocate

Versus

ASS MOHAMMAD @ MAMMAN & ORS. Respondents

Through: Mr. S.N.Prashar & Ms.Pankaj
Kumari, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 18th November, 2015 grants compensation of ₹15,74,876/- with interest @ 9% p.a. to legal heirs of deceased *Mohd. Yameen*, aged 41 years, on account of fatal injury suffered by him in a vehicular accident, which took place on 16th July, 2012. In this accident, one *Ass. Mohd. @ Mamman* also sustained injuries and vide impugned

Award, he has been granted compensation of ₹26,020/- with interest @ 9% p.a.

2. In the above captioned first appeal, impugned Award is assailed on the ground that the compensation awarded to legal heirs of deceased *Mohd. Yameen* is exorbitant, whereas in the above captioned second appeal, impugned Award is assailed on the ground that compensation granted to injured- *Ass. Mohd.* is on the higher side. With the consent of learned counsel for the parties, both the appeals have been heard together and are being decided by this common judgment.

3. The factual background of this case, as noticed in the impugned Award, is as under:-

“Briefly the facts of the case are that on 16/07/2012 at about 10:15 PM both Mohd. Yameen (since deceased) and Ass Mohammad @ Mamman were coming to their house from Shahdara, Delhi on bicycle and when they reached in front of house of Suresh, Chowki Nithora Khanna Nagar, Loni, Ghaziabad, U.P. in the meanwhile a Maruti Van bearing registration no. DL 3C AZ 3435 (VAN) which was being driven by its driver/ respondent No.1 at a very high speed, rashly and negligently, came from opposite side and hit the bicycle with great force as a result of which bicycle fell down on the road and both of them sustained grievous injuries. They were immediately taken to GTB Hospital, Shahdara, Delhi by police where Mohd. Yameen died during the course of treatment on 17/07/2012 and the treatment of

Sh. Ass Mohammed was stated to be continuing as an out door patient at the time of filing of petition. The FIR No. 634/12 u/S 279/337/338/304-A/427 IPC was also registered at PS Loni, Distt. Ghaziabad, U.P. in this respect. ”

4. To render the impugned Award, learned Motor Accident Claims Tribunal (*hereinafter referred to as the “Tribunal”*) has relied upon evidence of PW-1, *Smt. Afsana*, wife of deceased and evidence of injured- *Ass. Mohammad* and other evidence. The breakup of compensation awarded by Tribunal to legal heirs of deceased *Mohd. Yameen*, is as under:-

1.) Loss of dependency	:	₹11,49,876/-
2.) Love and affection	:	₹2,00,000/-
3.) Loss of Consortium	:	₹1,00,000/-
4.) Loss of Estate	:	₹1,00,000/-
5.) Funeral expenses	:	₹25,000/-
Total :		₹15,74,876/-

5. The breakup of compensation awarded by Tribunal to injured- *Ass. Mohd.* is as under:-

1.) Pain & Suffering	:	₹12,000/-
2.) Special diet	:	₹3,000/-
3.) Conveyance	:	₹2,000/-
4.) Attendant charges	:	₹2,000/-
5.) Loss of Income	:	₹7,020/-
Total :		₹26,020/-

6. The challenge to impugned Award by learned counsel for Insurer is

on the ground that the accident in question had taken place due to contributory negligence of deceased and the injured. In support of his submission, counsel for Insurer has drawn attention of this Court to evidence of injured- Ass. Mohd. (PW-2), who has categorically stated in his cross-examination that he and deceased were under the influence of liquor and they were driving their bicycles on the wrong side of the road. So, it is submitted that instant case is of contributory negligence and learned Tribunal has erred in not holding so and therefore, the compensation granted to the legal heirs of deceased and injured ought to be reduced. Regarding injured- Ass. Mohd., it is also the submission of counsel for Insurer that the compensation granted is on the higher side, as he had sustained simple injuries only. It is also submitted by counsel for Insurer that the interest awarded by the Tribunal is also on the higher side. Lastly, it is submitted by counsel for Insurer that in the above captioned first appeal, compensation granted under the “*non-pecuniary heads*” ought to be suitably reduced in light of decision of Constitution Bench of Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680.

7. On the contrary, learned counsel for claimants and the injured supports the impugned Award and submits that the compensation awarded is just and fair. Learned counsel for claimants submits that from the site plan of the spot of accident in question, it is evident that the negligence was of the driver of the vehicle in question and not of deceased or injured. So, it is submitted that these appeals deserve to be dismissed.

8. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that the Tribunal has erred in not relying upon the cross-examination of injured- *Ass. Mohd. (PW-2)*, who has in no uncertain terms deposed that he and the deceased were under the influence of liquor and they were cycling on the wrong side of the road. Not only this, injured- *Ass. Mohd. (PW-2)* has also disclosed in his cross-examination that the driver of vehicle in question was driving on the right side. In the accident in question, *Mohd. Yameen* had died and injured- *Ass. Mohd.* had sustained injuries, but in light of afore-referred evidence, it is reasonable to conclude that the contributory negligence of deceased and injured was to the extent of 50%. In the face of cross-examination of injured- *Ass. Mohd. (PW-2)*, there was no requirement of leading any other evidence. Even if, the aspect of deceased and injured being under the influence of alcohol is ignored, still the contributory negligence of deceased and injured would be of 50%, for the reason that they were riding their bicycles on the wrong side of the road.

9. In view of aforesaid, legal heirs of deceased *Mohd. Yameen* would be entitled to 50% of the compensation granted under the head “*loss of dependency*”. As regards compensation granted to legal heirs of deceased *Mohd. Yameen* under the ‘*non pecuniary heads*’, it needs to be brought in tune with Constitution Bench decision of Supreme Court in *Pranay Sethi (supra)*.

10. Accordingly, compensation granted by the Tribunal to legal heirs of deceased *Mohd. Yameen* under the head of “*loss of dependency*” is reduced by 50% from ₹11,49,876/- to ₹5,74,938/-. As regards

compensation granted under the ‘*non pecuniary heads*’, it needs to be brought in tune with Constitution Bench decision of Supreme Court in *Pranay Sethi (supra)*. Accordingly, compensation granted by the Tribunal under the head of ‘*loss of love & affection*’ is disallowed. Compensation granted under the head “*loss of estate*” is also reduced from ₹1,00,000/- to ₹15,000/- and compensation granted under the head “*loss of consortium*” is also reduced from ₹1,00,000/- to ₹40,000/- and “*funeral expenses*” are also reduced from ₹25,000/- to ₹15,000/-.

11. In light of the aforesaid, the compensation payable to legal heirs of deceased *Mohd. Yameen* is reassessed as under:-

S.No.	Description	Amount
1.	Loss of Dependency	₹5,74,938/-
2.	Loss of Consortium	₹40,000/-
3.	Loss of Estate	₹15,000/-
4.	Funeral Expenses	₹15,000/-
	Total	₹6,44,938/-

12. So far as compensation granted to injured- *Ass. Mohd.* is concerned, this Court finds that since no compensation has been granted on account of injuries sustained by him in the accident in question, therefore, deduction of 50% towards contributory negligence under the non-pecuniary heads is not to be made. Hence, the compensation granted to injured is just and reasonable and is not required to be reduced.

13. Consequentially, the compensation payable to legal heirs of deceased *Mohd. Yameen* is reduced from ₹15,74,876/- to ₹6,44,938/-. As far as interest granted by the Tribunal is concerned, I find that a Three Judge Bench of Supreme Court in a recent decision of *Jagdish v. Mohan*

and Others, (2018) 4 SCC 571 has granted interest @ 9% *per annum* on the awarded compensation and so, interest @ 9% *per annum* is maintained. The awarded compensation be disbursed in the ratio and manner as indicated in the impugned Award. Likewise, compensation granted to injured be released forthwith. Statutory deposit alongwith excess deposit, if any, be refunded to Insurer.

14. With aforesaid directions, the above captioned two appeals are disposed of.

(SUNIL GAUR)
JUDGE

JULY 10, 2018

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