

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: August 09, 2018

+ **MAC. APP. 282/2013**

IFFCO TOKIO GENERAL INSURANCE CO. LTD.

.....Appellant

Through: Ms. Shantha Devi Raman,
Advocate

Versus

MUKESH SAH & ORS.

.....Respondents

Through: Mr. A.K. Chaudhary, Advocate

+ **MAC. APP. 283/2013**

IFFCO TOKIO GENERAL INSURANCE CO. LTD.

.....Appellant

Through: Ms. Shantha Devi Raman,
Advocate

Versus

GYAN CHAND & ORS.

.....Respondents

Through: Mr. A.K. Chaudhary, Advocate

+ **MAC. APP. 505/2016**

MUKESH SAH & ORS.

..... Appellants

Through: Mr. A.K. Chaudhary, Advocate

Versus

IFFCO TOKIO GENERAL INSURANCE CO. LTD.

.....Respondent

Through: Ms. Shantha Devi Raman,
Advocate

+ **MAC. APP. 536/2016**

GYAN CHAND & ORS.

.....Appellants

Through: Mr. A.K. Chaudhary, Advocate

Versus

IFFCO TOKIO GENERAL INSURANCE CO. LTD.

.....Respondent

Through: Ms. Shantha Devi Raman,
Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned first two appeals are by Iffco Tokio General Insurance Co. Ltd. (*hereinafter referred to as the Insurer*) who seeks exoneration from paying the awarded compensation on the ground that the driver of insured vehicle was under influence of alcohol. The reduction in quantum of compensation is also sought by the *Insurer*. In the above captioned third and fourth appeals, Claimants seek enhancement in the quantum of compensation granted by the Tribunal. Impugned Award of 1st December, 2012 rendered by Motor Accident Claims Tribunal (*henceforth referred to as the "Tribunal"*) grants compensation to Claimants- *Gyan Chand & Ors.* on account of death of a Helper- *Naveen, s/o Gyan Chand*, aged 20 years and to Claimants- *Mukesh Sah & Ors.*, on account of death of a Daily Wager- *Manish, s/o Mukesh Sah*, aged 19 years, who had unfortunately died in a vehicular accident on 10th October, 2010.

2. To render the impugned Award, the Tribunal has relied upon

evidence of Claimants/ legal heirs of deceased and other documentary evidence on record. The compensation awarded by the Tribunal with interest @ 9% p.a. to legal heirs of deceased-*Manish and Naveen* in these appeals, is as under:-

S.No.	Name of Claimants	Compensation Awarded
1.	Mukesh Sah & ors.	₹8,61,096/-
2.	Gyan Chand & ors.	₹8,22,000/-

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

“The relevant circumstances behind the claim petitions are that on 10.10.2010 at about 1.30 AM while deceased Naveen was plying the motorcycle, bearing registration No.DL 7S AN-7245 (TVS) on which the other deceased, Manish Kumar was the pillion rider and as they were going from Chhattarpur temple to Kalkaji temple for Darshan and had reached at outer ring road near Masjid Moth, Nehru Place carriageway, when suddenly the motorcycle numbered above was hit by a speeding Ford Ikon, bearing registration No. DL 4C R-3862, being plied by its driver, Saurav Yadav, allegedly in rash and negligent manner. It is claimed that at the time of accident, the speed of the offending vehicle was so high that it forcibly hit the motorcycle as a result of which both the deceased persons fell on the road and suffered grievous

injuries. They were initially removed to Escorts Hospital, however, the doctors referred them to Safdarjung Hospital. Both the injured persons were thereafter taken to Safdarjung Hospital where deceased Manish succumbed to the injuries on 11.10.2010 and the other injured Naveen met with fatal end on 24.10.2010.”

4. Since these appeals arise out of aforesaid common impugned Award, therefore, with the consent of learned counsel for the parties, these appeals have been heard together and are being decided by this common judgment.

5. In the case of deceased- *Manish*, the Tribunal has assessed the “*loss of dependency*” on the basis of minimum wages of ₹5,278/- payable to an unskilled labourer and has made an addition of 30% towards “*future prospects*” while deducting 50% towards “*personal expenses*” of deceased and the multiplier applied is of 18. The breakup of compensation granted by the Tribunal to Claimants-*Mukesh Sah & Ors.*, who are legal heirs of deceased- *Manish* is as under:-

1.	Loss of dependency	₹7,41,096/-
2.	Funeral Expenses	₹10,000/-
3.	Love & Affection	₹1,00,000/-
4.	Loss of estate	₹10,000/-
	Total	₹8,61,096/-

6. In the case of Claimants- *Gyan Chand & Ors.*, the Tribunal has assessed the “*loss of dependency*” while taking the income of the

deceased to be ₹5,000/- p.m. and has made an addition of 30% towards future prospects and deduction of 50% towards “*personal expenses*” of deceased has been made. The multiplier applied is of 18. The breakup of compensation granted by the Tribunal to Claimants- *Gyan Chand & Ors.*, i.e. legal heirs of deceased- *Naveen* is as under:-

1.	Loss of dependency	₹7,02,000/-
2.	Funeral Expenses	₹10,000/-
3.	Love & Affection	₹1,00,000/-
4.	Loss of estate	₹10,000/-
	Total	₹8,22,000/-

7. In these appeals, driver and owner of the insured vehicle i.e. Ford Ikon have not come forward to contest these appeals.

8. The challenge to the impugned Award by learned Counsel for the Insurer is on the ground that the negligence was of the driver of the insured vehicle, as he was intoxicated when he was driving the insured vehicle. It is pointed out by counsel for Insurer that even the Tribunal has noted in the impugned Award that the driver of the insured vehicle was in an inebriated condition. Attention of this Court is drawn to evidence of R3W1, a witness of Insurer to point out that by driving the vehicle under the influence of alcohol, the terms and conditions of insurance policy stand contravened and so, the Insurer is liable to be absolved from paying the compensation to the Claimants. Attention of this Court is also drawn to the evidence of eye witness (*PW2*) to point out that the driver of the insured vehicle was drunk. In support of this submission, reliance is

placed upon the evidence of R3W1.

9. On the aspect of quantum of compensation granted by the Tribunal, it is submitted by counsel for Insurer that the compensation granted under the *non-pecuniary heads* need to be brought in tune with Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.*, (2017) 16 SCC 680.

10. On the contrary, counsel for Claimants supports the impugned Award and submits that these appeals deserve to be dismissed. Learned counsel for Claimants submits that the quantum of compensation granted is inadequate and it needs to be suitably enhanced. Enhancement of quantum of compensation is also sought by counsel for Claimants on the ground that deceased-*Naveen* was the only son of his parents and he remained admitted in the hospital for thirteen days.

11. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that eye witness (*PW-2*) in his evidence has stated that driver of the insured vehicle was drunk, as there was smell of alcohol in his breath but he has denied the suggestion that the driver of insured vehicle was badly drunk. Insurer's witness (*R3W2*) in his cross-examination has stated that he had collected the blood sample of driver of the insured vehicle but the percentage of alcohol present in the blood is not mentioned in the MLC. In the face of aforesaid evidence on record, Insurer cannot be absolved of the liability to pay the awarded compensation to the Claimants. It is so said as the terms and conditions of the insurance policy have not been placed on record alongwith the

Insurance Policy/Cover Note (*Ex. R3W1/3*). Otherwise also, Insurer's witness (*R3W1*) has stated in his evidence that the driver was driving the insured vehicle with the knowledge and consent of the owner of the insured vehicle. In any case, since the terms and conditions of the policy of insurance in question are not on record, so there is no justification to absolve the Insurer from its liability to pay the compensation awarded.

12. On the quantum of compensation awarded by the Tribunal, I find that the compensation awarded to Claimants of deceased- *Manish and Naveen* under the head "*loss of dependency*" is just and fair and no case for enhancement is made out. The compensation granted to legal heirs of deceased under the *non-pecuniary heads* has to be brought in tune with Supreme Court's Constitution Bench decision in *Pranay Sethi (Supra)*. Applying the dictum of *Pranay Sethi (supra)* to the facts of the instant case, the compensation granted by the Tribunal to Claimants under the head "*loss of love and affection*" is disallowed. However, "*funeral expenses*" are increased from ₹10,000/- to ₹15,000/- and compensation granted under the head "*loss of estate*" is also increased from ₹10,000/- to ₹15,000/-. Accordingly, the compensation payable to Claimants- *Gyan Chand & Ors.*, on account of death of *Naveen* is reassessed as under:-

1.	Loss of dependency	₹7,02,000/-
2.	Funeral Expenses	₹15,000/-
4.	Loss of estate	₹15,000/-
	Total	₹7,32,000/-

13. The compensation payable to Claimants- *Mukesh Sah & Ors.*, on

account of death of *Manish* is reassessed as under:-

1.	Loss of dependency	₹7,41,096/-
2.	Funeral Expenses	₹15,000/-
4.	Loss of estate	₹15,000/-
	Total	₹7,71,096/-

14. Consequentially, the compensation awarded by the Tribunal to Claimants-*Gyan Chand & Ors.*, who are legal heir of deceased-*Naveen*, is reduced from ₹8,22,000/-to ₹7,32,000/-. The compensation awarded to Claimants- *Mukesh Sah & ors.*, who are legal heirs of deceased- *Manish* is also reduced from ₹8,61,096/- to ₹7,71,096/-. The modified compensation shall carry interest @ 9% p.a. The modified compensation be released forthwith to Claimants in the ratio and manner as indicated in the impugned Award. Statutory deposit alongwith excess deposit, if any, be refunded to Insurer.

15. With aforesaid directions, the above captioned four appeals are disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 09, 2018

v