

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

Date of Decision: September 13, 2018

+ **MAC.APP. 315/2013**

+ **MAC.APP. 317/2013**

NATIONAL INSURANCE CO. LTD. Appellant

Through: Mr. Pankaj Seth, Advocate

Versus

RAMBIR SINGH & ORS

PAWAN KUMAR & ORS.

.....Respondents

Through: Mr. Pankaj Gupta, Advocate for
Ms. Suman Bagga, Advocate for
respondent-ICICI Lombard Gen.
Insurance Co.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned first appeal arises out of impugned Award of 17th January, 2013, vide which the Motor Accident Claims Tribunal (*henceforth referred to as 'the Tribunal'*) has awarded compensation of ₹3,65,000/- (*inclusive of interim award of ₹50,000/-*) with interest @ 9% p.a. to legal heirs of a Student-Vishal, aged 16 years, who had died in a vehicular accident which took place on 9th December, 2005.

2. In this unfortunate accident, another Student-Pawan aged 18 years, was grievously injured and the Tribunal vide separate Award of even date, i.e. 17th January, 2013, has granted compensation of ₹7,40,450/-

(inclusive of interim award of ₹25,000/-) with interest @ 9% p.a. to him, which is under challenge in the above captioned second appeal.

3. Since these two appeals arise out of one vehicular accident, therefore, with the consent of learned counsel for the parties, these appeals have been heard together and are being decided by this common judgment.

4. In above captioned appeals, *National Insurance Co. Ltd.* (hereinafter referred to as 'Insurer') seeks modification of the impugned Award on the ground of contributory/composite negligence and seeks reduction in the quantum of compensation. It is pointed out by Insurer's counsel that appellant is the Insurer of WagonR car involved in this accident and respondent-*ICICI Lombard General Insurance Co. Ltd.* is the Insurer of the Tractor involved in this accident.

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

“On the unfortunate day of 9.12.2005 the deceased with his cousin brother Pawan were going from their house to their fields in order to give tea to their grandfather who was working in the fields. At about 5.45 PM when the deceased and his cousin reached on Barwala Begumpur road, Delhi a collusion took place between the three vehicles i.e. Wagon R bearing No.DL 9CM 3227, Eicher Tractor and motorcycle bearing No.DL 8SW 3032 being driven by the deceased. As per the version of the injured Pawan, the accident took place due to the sole negligency of the driver of the Wagon R car as the said maruti Wagon R bearing No. DL 9CM 3227 came from behind being rashly and negligently driven

by its driver hit the motorcycle and at the same time Tractor which was passing from opposite direction also hit. However, as per the police version the said accident was caused due to the negligence and rash driving of the driver of the said tractor. The deceased was taken to Braham Shakti Hospital, Delhi for treatment where he was declared brought dead while his cousin Pawan was admitted with serious injuries. An FIR no.515/05 was lodged with PS Bawana and a case U/s. 279/337/304A IPC was registered against respondent No.1”

6. To render the impugned Award, the Tribunal has relied upon evidence of Injured and legal heirs of deceased and other documentary evidence on record. The Tribunal has assessed the income of deceased as per the Second Schedule to *the Motor Vehicles Act, 1988* and in case of Injured, his income has been assessed on minimum wages and has made addition of 30% towards ‘*future prospects*’. The Tribunal has also found Injured had suffered permanent disability of 65% in relation to right lower limb and the functional disability has been also assessed by the Tribunal at 65%. On the strength of evidence recorded, impugned Award has been rendered.

7. The breakup of compensation awarded by the Tribunal to legal heirs of deceased–*Vishal* is as under:-

<i>Loss of dependency</i>	:	<i>₹2,25,000/-</i>
<i>Funeral charges</i>	:	<i>₹10,000/-</i>
<i>Loss of Estate</i>	:	<i>₹10,000/-</i>
<i>Loss of love, company and affection etc.</i>	:	<i>₹1,00,000/-</i>
<i>Loss of gratuitous services</i>	:	<i>₹20,000/-</i>
<i>Total</i>	:	<i>₹3,65,000/-</i>

8. The breakup of compensation awarded by the Tribunal to Injured-
Pawan is as under:-

<i>Loss of income</i>	:	₹10,841/-
<i>Loss of future income</i>	:	₹6,59,609/-
<i>Special diet expenses</i>	:	₹10,000/-
<i>Conveyance charges</i>	:	₹10,000/-
<i>Pain, suffering, mental shock and trauma</i>	:	₹50,000/-
<i>Total</i>	:	₹7,40,450/-

9. The challenge to the impugned Awards by learned counsel for Insurer is on the ground that the accident in question had taken place due to composite negligence of tractor, which had hit from front the motorcycle, on which the deceased and injured were travelling. It is further submitted that the accident in question had occurred also due to the contributory negligence of deceased as he was a minor and was not supposed to drive. It is submitted that the compensation granted to legal heirs of deceased under the head of '*love and affection*' and '*gratuitous services*' is required to be disallowed. It is next submitted by Insurer's counsel that the Tribunal has erred in not making deduction of 50% towards '*personal expenses*' as deceased was unmarried.

10. The compensation granted by the Tribunal to Injured is assailed on the ground that no addition towards '*future prospects*' is to be made in a case of injury. To submit so, reliance is placed upon Supreme Court's recent decision in *Anant Son of Sidheshwar Dukre v. Pratap Son of Zhamnnappa Lamzane & Another*, 2018 (10) SCALE 130. It is further submitted that the functional disability of Injured ought to have been assessed at 30%. Thus, it is submitted that the impugned Award deserves

to be modified.

11. Despite service, there is no representation on behalf of Injured and legal heirs of deceased. Learned counsel for respondent- *ICICI Lombard General Insurance Co. Ltd.* supports the impugned Award and refutes the aforesaid stand taken on behalf of appellant-Insurer.

12. Upon hearing and on perusal of impugned Awards, evidence on record as well as the decision cited, I find that in the face of evidence of Injured-*Pawan*, it cannot be said that the accident in question had taken place due to the composite/contributory negligence of the Tractor. It is so said because there is no cross-examination of the Injured on the aspect of composite or contributory negligence. Supreme Court in its recent decision in *Anant (supra)*, while dealing with the case of an injured, has not made any addition towards '*future prospects*' and so, no addition towards '*future prospects*' is required to be made. The Tribunal has erred in adding 30% towards '*future prospects*'.

13. The Tribunal has rightly assessed the income of the Injured on minimum wages and has also correctly assessed the functional disability at 65%. Multiplier of 18 has been rightly applied by the Tribunal. Accordingly, the '*loss of earning capacity*' of Injured is reassessed as under: -

$$\begin{aligned} \text{₹}3614/- \times 12 \times 18 \times 65/100 &= \text{₹}5,07,405.60/-, \\ &\text{(rounded off to ₹}5,07,406/-) \end{aligned}$$

14. Since no cross-objections have been filed by Legal Heirs of deceased and the Injured, therefore, the compensation granted by the Tribunal to the Injured under the '*non pecuniary heads*' is maintained.

Consequently, the compensation payable to Injured-Pawan is reassessed as under:-

<i>Loss of earning capacity</i>	:	₹5,07,406/-
<i>Special diet expenses</i>	:	₹10,000/-
<i>Conveyance charges</i>	:	₹10,000/-
<i>Loss of income</i>	:	₹10,841/-
<i>Pain, suffering, mental shock and trauma</i>	:	₹50,000/-
Total	:	₹88,247/-

15. In case of deceased, I find that the Tribunal has rightly assessed the notional income of the deceased, who was a minor child, as per the Second Schedule to *the Motor Vehicles Act, 1988*. Since no cross-objections have been filed by Claimants, therefore, the multiplier applied by the Tribunal is not interfered with. However, no deduction towards 'personal expenses' of deceased has been made, whereas 50% needs to be deducted towards 'personal expenses' of deceased. Accordingly, 'loss of dependency' is reassessed as under: -

$$₹15,000/- \times 15 \times 50\% = ₹1,12,500/-$$

16. The compensation granted by the Tribunal to legal heirs of deceased-Vishal under the 'non-pecuniary heads' is maintained as they have not filed any cross-objections. Accordingly, the compensation payable to legal heirs of deceased-Vishal is reassessed as under: -

<i>Loss of dependency</i>	:	₹1,12,500/-
<i>Funeral charges</i>	:	₹10,000/-
<i>Loss of Estate</i>	:	₹10,000/-
<i>Loss of love, company and affection etc.</i>	:	₹1,00,000/-

<i>Loss of gratuitous services</i>	:	<u>₹20,000/-</u>
Total	:	₹2,52,500/-

17. In light of aforesaid, total compensation payable to Injured-Pawan is reduced from ₹7,40,450/- to ₹5,88,247/- whereas in case of deceased-Vishal, it is reduced from ₹3,65,000/- to ₹2,52,500/-. After deducting the interim award of ₹25,000/- granted by the Tribunal to Injured-Pawan, the net compensation payable to him comes to ₹5,63,247/-, whereas after deducting the interim award of ₹50,000/- granted by the Tribunal to legal heirs of deceased-Vishal, the net compensation payable to them comes to ₹2,02,500/-. The modified compensation shall carry interest @ 9% *per annum*. After refunding the statutory deposit alongwith excess amount, if any, to appellant-Insurer, the modified compensation be disbursed to Injured-Pawan and legal heirs of deceased-Vishal respectively, as per this judgment and in the manner as indicated in the respective impugned Awards.

18. With aforesaid modification in the impugned Awards, the above captioned two appeals are disposed of.

(SUNIL GAUR)
JUDGE

SEPTEMBER 13, 2018

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