

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

Date of Decision: August 02, 2018

+ **MAC.APP. 88/2013 & CMs 1552-53/13**
+ **MAC.APP. 89/2013 & CMs 1555-56/13**
+ **MAC.APP. 90/2013 & CMs 1566-67/13**
+ **MAC.APP. 91/2013 & CMs 1569-70/13**

POONAM

RAJESH

SANDEEP

RAJESH & ANR.

..... Appellants

Through: Mr. A.K. Mishra, Advocate

versus

KISHAN BAHADOOR & ORS

..... Respondents

Through: Mr. Pankaj Seth, Advocate for
Insurer

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 3rd November, 2010 passed by the Motor Accident Claims Tribunal, Dwarka Courts, New Delhi (*hereinafter referred to as 'the Tribunal'*) grants compensation to appellants/*Claimants/Injured persons-Poonam, Rajesh and Sandeep* on account of injuries sustained by them and to appellants-*Rajesh and Anr.*, on account of death of a housewife-*Shanti*, aged 27 years on the day of the accident, in a vehicular accident, which took place on 27th March, 2004.

2. In the above-captioned four appeals, enhancement of compensation is sought by appellants-*Claimants/Injured persons*. The above-captioned

first three appeals are by appellants/injured persons namely *Poonam D/o Om Pal, Rajesh S/o Ram Singh* and *Sandeep (a minor) S/o Om Pal*, who have been granted compensation of ₹1,00,000/-, ₹1,000/- and ₹80,000/- respectively, on account of injuries sustained by them in the accident in question, whereas the above-captioned fourth appeal is by legal heirs of late *Shanti*, who have been granted compensation of ₹3,86,000/-. The Tribunal has granted interest @ 7.5% *per annum* on the awarded compensation for a period of four years only. Penal interest @ 12% *per annum* has been also awarded by the Tribunal.

3. Since these four appeals arise out of 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.

4. The factual background common to these appeals, as noticed in the impugned Award, is as under:-

“On 27/3/2004 Miss Poonam, Rajesh, his wife Smt Shanti and Sandeep, a young boy of 13 years of age, had alongwith other passengers of the locality, boarded bus no DL 1 PB 0128 (hereinafter the “offending vehicle”) plying on route no.46. The bus had gone to Chattarpur Temple. From there the passengers came back in the offending vehicle. On 28/3/2004 at about 4 a.m (night) when the offending vehicle had reached near Kendriya Vidyalaya, Naraina, on the ring road, it had hit a stationary bus no. DL 1 PA 7974. The offending bus had been driven in a negligent manner by respondent no1 (in short R1).

Miss Poona, Rajesh, his wife Smt Shanti and Sandeep sustained injuries. The injuries sustained by Smt Shanti proved fatal.”

5. To render the impugned Award, the Tribunal has relied upon evidence of Injured persons/legal heirs of deceased-*Shanti* and other documentary evidence on record. The breakup of compensation awarded by the Tribunal to injured-*Poonam* is as under:-

S.No.	Description	Amount
1.	Pain and Suffering	₹60,000/-
2.	Loss of Amenities	₹25,000/-
3.	Special Diet	₹5,000/-
4.	Conveyance	₹5,000/-
5.	For medicines	₹5,000/-
Total		₹ 1,00,000/-

6. Injured-*Rajesh* has been awarded token compensation of ₹1,000/- by the Tribunal. The breakup of compensation awarded by the Tribunal to injured-*Sandeep* is as under:-

S.No.	Description	Amount
1.	Pain and Suffering	₹50,000/-
2.	Loss of Amenities	₹15,000/-
3.	Special Diet	₹5,000/-
4.	Conveyance	₹5,000/-
5.	For medicines	₹5,000/-
Total		₹ 80,000/-

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

S.No.	Description	Amount
1.	Loss of dependency 18,000 X 17	₹3,06,000/-
2.	Loss of Consortium	₹10,000/-
3.	Loss of Love and Affection	₹50,000/-

4.	For Funeral Expenses	₹10,000/-
5.	Loss of Estate	₹10,000/-
Total		₹ 3,86,000/-

8. Learned counsel for appellants-*Claimants/Injured persons* submits that compensation awarded by the Tribunal is inadequate and so, enhancement of compensation is sought in these appeals. It is submitted by appellants/*Claimants'* counsel that the Tribunal has erred in not making any addition towards '*future prospects*' and deceased-*Shanti* has been treated to be a housewife, although she was earning well by giving tuition and so, income of deceased-*Shanti* ought to be assessed properly. It is further submitted that deceased-*Shanti* was aged 27 years on the day of the accident and so, multiplier of 33 ought to have been applied. It is also submitted that deceased-*Shanti* was survived by her husband and a minor son and so, deduction towards '*personal expenses*' ought to be $\frac{1}{3}^{\text{rd}}$ and not $\frac{1}{2}$. It is pointed out that injured-*Rajesh* and *Poonam* had suffered permanent disability, but no compensation on account of '*loss of earning capacity*' has been granted to them. As far as compensation granted to injured persons is concerned, learned counsel for appellants submits that the quantum of compensation granted to them is meager and it needs to be suitably enhanced.

9. Learned counsel for respondent-*Insurer* supports the impugned Award and submits that no case for enhancement is made out. It is pointed out that the disability suffered by injured-*Rajesh* was zero percent. It is submitted that *Rajesh*, a legal heir of deceased-*Shanti*, has not led any evidence on dependency aspect and so, legal heirs of deceased-*Shanti* are not entitled to compensation awarded to them. Thus,

dismissal of these appeals is sought by learned counsel for respondent-*Insurer*.

10. Attention of this Court is drawn by learned counsel for respondent-*Insurer* to Section 173 (2) of *the Motor Vehicles Act, 1988* to submit that appeal filed by injured-*Rajesh* to claim enhancement of compensation on account of injuries sustained by him in this accident, is not maintainable as the compensation awarded to him is less than ₹10,000/- and so, its dismissal is sought.

11. Upon hearing and on perusal of impugned Award and the evidence on record, I find that in view of Section 173 (2) of *the Motor Vehicles Act, 1988*, appeal filed by injured-*Rajesh* to claim enhancement of compensation granted to him on account of injuries suffered by him in this accident, is not maintainable as the afore-referred Section mandates that no appeal shall lie to this Court if quantum of compensation awarded by the Tribunal is less than ₹10,000/-. As such, appeal filed by injured-*Rajesh* i.e. MAC.APP. 89/2013, alongwith pending applications is hereby dismissed being not maintainable.

12. It is true that injured-*Rajesh*, as a legal heir of deceased-*Shanti*, had led evidence, but he did not depose anything on the dependency aspect. It has also come in the evidence that after death of *Shanti*, her husband-*Rajesh* had remarried after three years. Even if *Rajesh*, husband of deceased-*Shanti*, had inadvertently not deposed on the dependency aspect, but still judicial notice can be taken of the fact that he and his minor son had suffered on account of death of *Shanti*, who was aged 27 years on the day of the accident. The Tribunal has rightly assessed the notional income of deceased-*Shanti*, but has erred in deducting 50%

towards '*personal expenses*'. In view of Supreme Court's Constitution Bench in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680, deduction towards '*personal expenses*' ought to be 1/3rd as she had left behind her husband and a minor son and addition towards '*future prospects*' ought to be 40%.

13. In view of Supreme Court's decision in *Sarla Verma (Smt.) & Ors. Vs. Delhi Transport Corporation & Anr.*, (2009) 6 SCC 121, the applicable multiplier is of 17, as adopted by the Tribunal and not of 33, as claimed by the legal heirs of deceased-*Shanti*. The Tribunal has erred in not making addition of 40% towards '*future prospects*' on the basis of notional income of deceased-*Shanti*, aged 27 years. Accordingly, the loss of dependency of legal heirs of deceased-*Shanti* is reassessed as under: -

$$₹36,000/- \text{ p.a.} \times 2/3 \times 17 \times 140/100 = ₹5,71,200/-$$

14. In view of Supreme Court's Constitution Bench decision in *Pranay Sethi (supra)*, the compensation granted by the Tribunal under the head of '*loss of love & affection*' is disallowed. However, compensation under the head of '*loss of consortium*' is enhanced from ₹10,000/- to ₹40,000/- and compensation granted under the head of '*loss of estate*' is enhanced from ₹10,000/- to ₹15,000/-. Likewise, '*funeral expenses*' are also enhanced from ₹10,000/- to ₹15,000/-.

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

Sr. No.	Description	Amount
1	Loss of Dependency	₹5,71,200/-
2	Loss of Consortium	₹40,000/-

4	Loss of Estate	₹15,000/-
5	Funeral Expenses	₹15,000/-
Total		₹6,41,200/-

16. As regards compensation granted by the Tribunal to injured-*Sandeep*, a student, I find that he was aged 13 years on the day of the accident and as per the evidence of his mother-*Smt. Santosh*, no permanent physical impairment was detected by the Board of Directors, which had issued *Disability Certificate (Ex.PW3/1)*. Hospitalization of injured-*Sandeep* was for a period of one week only. Considering the nature of injuries sustained by injured-*Sandeep*, I find that the Tribunal has rightly granted compensation of ₹80,000/- to him and therefore, it is accordingly maintained.

17. As regards compensation granted to injured-*Poonam*, a student on the day of the accident, I find that as per the *Disability Certificate (Ex.PW2/1)*, she had suffered visual handicap of 30% in relation to right eye, as a result of the injuries sustained by her in this accident and her treatment had continued for about 5 to 6 months since the day of the accident. The Tribunal has erred in discarding *Disability Certificate (Ex.PW2/1)* of injured-*Poonam* on the ground that it is not duly proved on record by any doctor. It is so said because the authenticity of this *Disability Certificate (Ex.PW2/1)* is not in doubt. The Tribunal has erred in not granting any compensation to injured-*Poonam* due to the disability suffered by her in this accident. In light of Supreme Court's decision in *Master Mallikarjun Vs. Divisional Manager, The National Insurance Company Ltd & Anr.*, AIR 2014 SC 736, *lump sum* compensation in case of children suffering disability of 10% to 30% in a motor accident has

been quantified at ₹3 lacs. The compensation granted to injured-*Poonam* under the '*non-pecuniary heads*' and '*medical expenses*' is found to be just and proper and is, therefore, maintained. Accordingly, the compensation payable to injured-*Poonam* is reassessed as under: -

S.No.	Description	Amount
1.	Loss due to disability	₹3,00,000/-
2.	Pain and Suffering	₹60,000/-
3.	Loss of Amenities	₹25,000/-
4.	Special Diet	₹5,000/-
5.	Conveyance	₹5,000/-
6.	For medicines	₹5,000/-
Total		₹ 4,00,000/-

18. In light of aforesaid, total compensation payable to legal heirs of deceased-*Shanti* is enhanced from ₹3,86,000/- to ₹6,41,200/-. Likewise, compensation payable to injured-*Poonam* is also enhanced from ₹1,00,000/- to ₹4,00,000/-. However, compensation payable to injured-*Sandeep*, as awarded by the Tribunal, is found to be just and proper and is hence maintained.

19. 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, appellants are also entitled to interest @ 9% *per annum*. The enhanced compensation, with interest @ 9% *per annum*, be deposited by the Insurer with the Tribunal within six weeks from today. The modified compensation, with interest, be released to Claimants in the ratio and manner as indicated in the impugned Award. Penal interest awarded by the Tribunal stands waived.

20. The above-captioned four appeals alongwith pending applications are disposed of in aforesaid terms.

(SUNIL GAUR)
JUDGE

AUGUST 02, 2018

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