

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

Date of Decision: October 09, 2018

+ **MAC.APP. 364/2018 & 14380/2018**

HDFC ERGO GENERAL INSURANCE CO LTDAppellant
Through: Mr. Sameer Nandwani, Advocate

Versus

POOJA KUMARI & ORS.Respondents
Through: Mr. S.N.Prashar, Advocate for
respondent-*Pooja Kumari*
Mr. Pratap Singh & Mr. Sandeep
Kaushik, Advocates for newly
added respondent-*Shalu*

+ **MAC.APP. 365/2018 & C.M. 14382/2018**

HDFC ERGO GENRAL INSURANCE CO LTD Appellant
Through: Mr. Sameer Nandwani, Advocate

Versus

PAWAN SHARMA @ PAWAN KUMAR SHARMA & ORS.
..... Respondents
Through: Mr. Shrey Chathly, Advocate for
respondent No.1

+ **MAC.APP. 366/2018 & C.M. 37034/2018**

HDFC ERGO GENERAL INSURANCE CO LTD.Appellant
Through: Mr. Sameer Nandwani, Advocate

Versus

DINESH SHARMA & ORS. Respondents

Through: Ms. Indu Aggarwal, Advocate for
Mr. Jatinder Kamra, Advocate for
respondents No.1 to 3

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

C.M. 40650/2018 (u/S 151 CPC) in MAC.APP. 364/2018

Vide interim order of 24th July, 2018, direction was issued to UCO Bank, Delhi High Court Branch to transfer amount of ₹1,00,000/- to bank account of respondent No.4 near the place of her residence, subject to her producing PAN card, Aadhaar Card and Passbook of her savings bank account.

The grievance made by petitioner in this application is that due to variance of address of respondent No.4 in DAR and Passbook, UCO Bank has not transferred the amount of ₹1,00,000/- to her bank account at Central Bank of India, Vishwas Nagar, Delhi.

The Manager, UCO Bank, Delhi High Court Branch is directed to ensure that amount of ₹1,00,000/- is transferred to the bank account of respondent No.4 on the basis of address given in Aadhaar Card and Passbook.

With aforesaid directions, this application is disposed of.

MAC.APP. 364/2018

MAC.APP 365/2018

MAC.APP. 366/2018

1. Impugned Award of 31st January, 2018 rendered by Motor

Accident Claims Tribunal (*henceforth referred to as the "Tribunal"*) grants compensation to respondents-Claimants of deceased- *Chetan*, aged 25 years, Driver by profession and also to legal heirs of deceased-*Akshay*, aged 22 years, a Supervisor in a private company, who died in a vehicular accident on 21st May, 2014. Impugned Award also grants compensation to Injured-*Pawan Sharma*, aged 25 years, on account of grievous injuries suffered by him in this accident.

2. The above captioned first and third appeals pertain to deceased- *Chetan* and *Akshay* respectively, wherein HDFC Ergo General Insurance Company Limited (*henceforth referred to as the "Insurer"*) seeks reduction of compensation awarded to their Claimants. In the second captioned appeal, Insurer is seeking reduction in the amount of compensation granted to *Pawan Sharma* (*henceforth referred to as Injured-Pawan Sharma*). Since these three appeals arise out of common Award of 31st January, 2018, therefore, these 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:-

Facts of the case, briefly stated, are that the deceased Akshay Sharma and injured Pawan Sharma were on pillion on a motorcycle bearing registration No. DL-13SD-4305 being driven by deceased Chetan on the date of accident, when their motorcycle was allegedly hit from behind by the above offending truck on the above said date, time and place of accident. This resulted into fatal injuries on the person of deceased Akshay Sharma and Chetan and grievous injuries on the person of the petitioner Pawan Sharma. All of them were taken to Dr.

RML Hospital by the PCR officials and deceased Akshay Sharma and Chetan were declared brought dead. Though, the petitioner-Pawan Sharma survived, but his right hand has been amputated from the shoulder joint and he has suffered 90% permanent disability in relation to his right upper limb because of this above said injuries. It is alleged that the above accident took place due to rash and negligent driving on the part of R-1 in driving the above offending truck.

4. To render the impugned Award, the Tribunal has relied upon evidence of eye witness and Injured-Pawan Sharma and legal heirs of deceased and other evidence on record. The compensation awarded by the Tribunal to Claimants and Injured (*without interest*) in these appeals, is as under:-

S. No.	Names of Claimants/Injured	Compensation Awarded
1.	Pooja Kumari & Anr.(<i>legal heirs of deceased Chetan</i>)	₹18,94,486/-
2.	Pawan Sharma (<i>Injured</i>)	₹29,98,818/-
3.	Dinesh Sharma & Ors. (<i>legal heirs of deceased Akshay</i>)	₹12,07,804/-

5. While computing “*loss of dependency*” of deceased-Chetan, the Tribunal has assessed his income on minimum wages payable to an unskilled worker and multiplier of 18 was applied. Deduction of 1/3rd towards “*personal expenses*” and addition of 40% towards “*future prospects*” was made. The break-up of compensation granted by the Tribunal to legal heirs of deceased-Chetan is as under:-

1.	Loss of dependency	₹17,24,486/-
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2.	Loss of consortium	₹40,000/-
3.	Loss of Love & Affection	₹1,00,000/-
4.	Loss of estate	₹15,000/-
5.	Funeral expenses	₹15,000/-
	Total	₹18,94,486/-

6. In the case of Injured-*Pawan Sharma*, the Tribunal has relied upon Disability Certificate (*Ex. PW3/3*) to assess his “*functional disability*” at 90%. To assess Injured-*Pawan Sharma*’s “*loss of income*” and “*loss of future income*”, minimum wages payable to a non-matriculate has been taken and after addition of 40% towards “*future prospects*” and applying multiplier of 18, the break-up of compensation awarded to Injured-*Pawan Sharma* is as under:-

1.	Loss of Income	₹1,13,256/-
2.	Expenditure on treatment, conveyance, special diet and attendant	₹96,916
3.	Compensation for mental and physical shock	₹50,000/-
4.	Pain and suffering	₹50,000/-
5.	Loss of amenities of life	₹20,000/-
6.	Loss of marriage prospects	₹1,00,000/-
7.	Loss of future income	₹25,68,646/-
	Total	₹29,98,818/-

In addition to compensation of ₹29,98,818/-, lump-sum compensation of ₹35,00,000/- has been also granted to Injured-*Pawan Sharma* towards fixation of an artificial limb.

7. To grant compensation to deceased-*Akshay*, the Tribunal has assessed his income on minimum wages payable to an unskilled worker

and after making addition of 40% towards “*future prospects*” and deducting 50% towards “*personal expenses*” and applying multiplier of 15, the break-up of compensation granted by the Tribunal to legal heirs of deceased- *Akshay* is as under:-

1.	Loss of dependency	₹10,77,804/-
2.	Loss of Love & Affection	₹1,00,000/-
3.	Loss of estate	₹15,000/-
4.	Funeral expenses	₹15,000/-
	Total	₹12,07,804/-

8. The challenge to the impugned Award by learned counsel for appellant-*Insurer* is on the ground that the accident in question had taken place due to contributory negligence of deceased-*Chetan*, who was driving the motorcycle without wearing helmet and had two pillion riders, who were also without helmet. It is submitted that deceased-*Chetan* was driving the motorcycle without a driving license and so, it is a clear case of contributory negligence. It is next submitted by counsel for Insurer that compensation granted to legal heirs of deceased-*Chetan* and *Akshay* under the head of “*loss of love and affection*” deserves to be set aside in view of Supreme Court’s Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680. It is further submitted by counsel for Insurer that the Tribunal has erred in assessing the “*functional disability*” of Injured-*Pawan Sharma* at 90% and it ought to be assessed at 45%. Lastly, it is submitted that compensation of ₹35,00,000/- granted to Injured-*Pawan Sharma* for fixation of artificial limb is without any basis, as *PW5-Dr. Binod Kalita, Specialist (Ortho)*, in his evidence has clearly deposed that no artificial

limb can be implanted on Injured-*Pawan Sharma*. Hence, reduction of compensation granted to Claimants and Injured is sought by Insurer.

9. On the contrary, counsel for Claimants and Injured refutes the aforesaid stand taken on behalf of Insurer and support the impugned Award and submit that these appeals deserve dismissal.

10. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that in the face of evidence of Injured/eye-witness-*Pawan Sharma*, contributory negligence cannot be attributed to deceased-*Chetan*, who was driving the motorcycle in question on the day of accident. Such a view is taken because there is no worthwhile cross-examination of eye witness and Injured-*Pawan Sharma* on the aspect of accident in question being caused due to not wearing helmet. It is a matter of record that the accident in question had taken place because the offending vehicle i.e. the truck had hit the motor cycle of deceased from behind. Evidence of eye witness and Injured-*Pawan Sharma* and the site plan (*Ex.PW1/3*) of place of accident on record, persuades this Court to hold that plea of contributory negligence put up by the Insurer fails. It is so said because the Insurer has not got examined driver of the insured truck to set up a contrary version. A Three Judge Bench of Supreme Court in *Dinesh Kumar Vs. National Insurance Company Limited* (2018) 1 SCC 750 has negated the plea of contributory negligence on the ground of driver not possessing a valid driving license, as it has to be seen whether the accident had taken place due to rash and negligent driving of vehicle by the said driver. In the instant case, I do not find that the accident in question had taken place due to negligence of

driver of the motor cycle or because he was driving the motor cycle without a valid driving license.

11. This court is persuaded to examine Insurer's plea of disallowing compensation granted under the head of "*Compensation for loss of love and affection*". In view of Supreme Court's Constitution Bench decision in *Pranay Sethi (Supra)*, compensation awarded under the head of "*loss of love, care and affection*" to legal heirs/ claimants of deceased-*Chetan* and *Akshay* is disallowed.

12. As per Disability Certificate (*PW3/3*), Injured-*Pawan Sharma* had suffered permanent disability of 90% in relation to his right upper limb. It is a case of disarticulation of right shoulder. The photographs of Injured-*Pawan Sharma* on record reveal that he had lost his right arm completely. Injured-*Pawan Sharma* was a driver by profession and in his cross-examination he has deposed that he had lost his driving license and other documents in this road accident. It has also come in his evidence that he had gone to the local police station to lodge the complaint regarding loss of his driving license but according to him, no complaint was registered. In the fact and circumstances of this case, I find that due to disarticulation of his right arm, Injured-*Pawan Sharma* has become totally incapacitated and is unable to earn his livelihood or to perform his daily activities. So, in the considered opinion of this Court, the Tribunal has rightly assessed his "*functional disability*" at 90%.

13. With regard to compensation of ₹35,00,000/- granted to Injured-*Pawan Sharma* on account of fixation of artificial limb, I find that *PW5-Dr. Binod Kalita, Specialist (Ortho)* in his evidence has categorically

deposed as under:-

“No artificial limb can be implanted.”

Accordingly, compensation of ₹35,00,000/- granted to Injured-*Pawan Sharma* by the Tribunal towards fixation of artificial limb is disallowed.

14. In view of above, compensation granted to legal heirs of deceased-*Chetan* and *Akshay* is re-assessed as under:-

Sl. No.	Name of deceased	Loss of dependency	Loss of estate	Funeral expenses	Consortium	Total compensation payable
1.	Chetan	₹17,24,486/-	₹15,000/-	₹15,000/-	₹40,000/-	₹17,94,486/-
2.	Akshay	₹10,77,804/-	₹15,000/-	₹15,000/-	Nil	₹11,07,804/-

15. Consequentially, the compensation awarded by the Tribunal to legal heirs of deceased-*Chetan* is reduced from ₹18,94,486/- to ₹17,94,486/- and compensation payable to legal heirs of deceased-*Akshay* is reduced from ₹12,07,804/- to ₹11,07,804/-. The compensation of ₹29,98,818/- granted to Injured-*Pawan Sharma* by the Tribunal is maintained, while disallowing the cost of ₹35,00,000/- for fixing artificial limb. The reassessed compensation shall carry interest @9% per annum. The modified compensation be disbursed to legal heirs of deceased-*Chetan and Akshay* in the ratio and manner as indicated in the impugned Award. Awarded compensation with interest thereon be also released to Injured-*Pawan Sharma* in the manner spelt out in the impugned Award. Statutory deposit and excess deposit, if any, be refunded to Insurer.

16. With aforesaid directions, the above captioned three appeals and

the applications are accordingly disposed of.

(SUNIL GAUR)
JUDGE

OCTOBER 09, 2018

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