

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

Date of Decision: August 21, 2018

+ **MAC.APP. 408/2017**

SAVITRI DEVI (DECEASED) THR HER LRS Appellant

Through: Mr. V.V. Gautam and Mr. Prashant
Dubey, Advocates

versus

MOTI RAM & ORS (TATA AIG GENERAL INS CO LTD)

..... Respondents

Through: Mr. Navneet Goel, Advocate for
Mr. Sameer Nadwani, Advocate
for respondent-Insurer

+ **MAC.APP. 415/2017**

MADHU Appellant

Through: Mr. V.V. Gautam and Mr. Prashant
Dubey, Advocates

versus

MOTI RAM & ORS (TATA AIG GENERAL INS CO LTD)

..... Respondents

Through: Mr. Navneet Goel, Advocate for
Mr. Sameer Nadwani, Advocate
for respondent-Insurer

+ **MAC.APP. 418/2017**

LATIKA SHARMA Appellant

Through: Mr. V.V. Gautam and Mr. Prashant
Dubey, Advocates

versus

MOTI RAM & ORS (TATA AIG GENERAL INS CO LTD)

..... Respondents

Through: Mr. Navneet Goel, Advocate for
Mr. Sameer Nadwani, Advocate
for respondent-Insurer

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above-captioned three appeals pertain to one vehicular accident, which took place on 23rd October, 2004 and so, with the consent of learned counsel for the parties, these appeals have been heard together and are being decided by this common judgment.

2. The above-captioned first appeal is by the legal heirs of a housewife-*Savitri* aged 68 years, who had sustained grievous injuries in this accident and after about four years, she had otherwise died on 4th February, 2008. The Motor Accident Claims Tribunal (*hereinafter referred to as 'the Tribunal'*) has granted compensation of ₹1,06,385/- with interest @ 9% *per annum*.

3. The above-captioned second appeal pertains to a 42 years old housewife-*Madhu*, w/o of *Narender Sharma*, who was grievously injured and had sustained 48% permanent disability in relation to her left ankle and knee. The Tribunal has assessed the functional disability of injured-*Madhu* at 25% and has awarded compensation of ₹3,26,961/- with interest @ 9% *per annum* to her.

4. The above-captioned third appeal relates to an 18 years old

student-Latika, D/o Narender Sharma, who was grievously injured in this vehicular accident and due to the injuries sustained by her in this accident, she had entailed loss of income for a period of four months. The Tribunal has granted compensation of ₹91,412/- with interest @ 9% *per annum* to her. In these appeals, the Tribunal has found that the deceased and injured persons were travelling in the insured car and the negligence was of the driver of the offending vehicle, i.e. Jeep, which was not insured and so, the liability to pay the awarded compensation has been put upon driver and owner of the offending vehicle i.e. Jeep.

5. The facts, as noticed in the impugned Award, are as under:-

“Brief facts of the case as revealed from the petition are that on 23.10.2004, the petitioner/injured Smt. Savitri Devi alongwith her other family was going in Indica Car bearing registration No. DL-4C-M-8846 from Delhi to Khatoor Shamji at District Sikar, Rajasthan, which car was driven by Sh. Devender Kumar/R3 at the relevant time at a slow speed and on the correct side of the road. When at about 8:30 pm, they reached between Khatoor Shamji and Reengus Road and were only about 3-4 km. Away from Khatoor Shamji, suddenly a jeep bearing registration No. RJ-14-3C-3831 (hereinafter referred to as the “offending vehicle”) which at the relevant time was driven by Sh. Moti Ram/R1 in a rash, negligent and also zig zag manner came from the front side and it struck against their Indica Car due to which the petitioner including various other persons sitting in the said car sustained injuries. Further, the petitioner was taken to CHC Reengus hospital at Sikar where the doctors attended her vide IR No. 304-C and after first aid, she was referred to SMS Hospital at Jaipur, where she remained admitted from 24.10.2004 to 28.10.2004 and even thereafter, she was referred for further

treatment to Maharaja Agarsain Hospital, Delhi where she remained under treatment from 28.10.2004 to 01.11.2004.”

6. The Tribunal has relied upon the evidence of Claimants, Injured persons and other evidence on record to render the impugned Awards. The breakup of the compensation granted by the Tribunal to legal heirs of deceased-Savitri is as under: -

<i>Sl. No.</i>	<i>Compensation under various heads</i>	<i>Award amount</i>
1.	<i>Pain and suffering</i>	<i>Rs. 30,000/-</i>
2.	<i>Special diet</i>	<i>Rs. 5,000/-</i>
3.	<i>Conveyance Charges</i>	<i>Rs. 5,000/-</i>
4.	<i>Attendant Charges</i>	<i>Rs. 15,000/-</i>
5.	<i>Medical Bills</i>	<i>Rs. 51,385/-</i>
6.	<i>Loss of Income</i>	<i>Nil.</i>
<i>Total</i>		<i>Rs. 1,06,385/-</i>

7. The breakup of the compensation granted by the Tribunal to injured-Madhu is as under: -

<i>Sl. No.</i>	<i>Compensation under various heads</i>	<i>Award Amount</i>
1.	<i>Loss of Income</i>	<i>Rs. 28,940/-</i>
2.	<i>Loss of future earning capacity</i>	<i>Rs. 1,21,548/-</i>
3.	<i>Pain and suffering</i>	<i>Rs. 50,000/-</i>
4.	<i>Loss of enjoyment of amenities of life</i>	<i>Rs. 40,000/-</i>
5.	<i>Conveyance and special diet</i>	<i>Rs. 10,000/-</i>
6.	<i>Medical expenses</i>	<i>Rs. 66,473/-</i>
7.	<i>Attendant charges</i>	<i>Rs. 10,000/-</i>
<i>Total</i>		<i>Rs. 3,26,961/-</i>

8. The breakup of the compensation granted by the Tribunal to

injured-Latika is as under: -

<i>Sl. No.</i>	<i>Compensation under various heads</i>	<i>Award amount</i>
1.	<i>Pain and suffering</i>	<i>Rs. 30,000/-</i>
2.	<i>Special diet</i>	<i>Rs. 5,000/-</i>
3.	<i>Conveyance Charges</i>	<i>Rs. 5,000/-</i>
4.	<i>Attendant Charges</i>	<i>Rs. 20,000/-</i>
5.	<i>Medical Bills</i>	<i>Rs. 19,836/-</i>
6.	<i>Loss of Income</i>	<i>Rs. 11,576/-</i>
<i>Total</i>		<i>Rs. 91,412 /-</i>

9. In these appeals, *Claimants/Injured* persons are aggrieved by impugned Awards, which put the liability on the driver and owner of the offending vehicle, i.e. Jeep, to pay the awarded compensation. It is submitted that the deceased and injured persons were third party and so, Insurer of the insured vehicle is liable to pay the awarded compensation. Reliance is placed by learned counsel for *Claimants/Injured* persons upon an unreported decision of a coordinate Bench of this Court in MAC. APP. 133/2008 titled *United India Insurance Co. Ltd. Vs. Alka Mangla & Ors.* rendered on 29th February, 2008. It is further submitted that though *Smt. Savitri* had died on 4th February, 2008, but she had died to the injuries sustained by her in this accident and so, compensation awarded to her is inadequate. Reliance is also placed upon Supreme Court's decision in *Arun Kumar Agrawal and Another v. National Insurance Company Ltd. and Others*, (2010) 9 SCC 218 to submit that the notional income of deceased ought to have been made the basis and compensation should have been determined by applying appropriate multiplier. It is submitted that '*attendant charges*' of ₹15,000/- granted by the Tribunal to *Smt.*

Savitri is inadequate and it needs to be enhanced to ₹96,000/-. Reliance is placed upon Supreme Court's decision in *Kavita Vs. Deepak and Others*, (2012) 8 SCC 604 to seek compensation of ₹3 lacs each under the head of '*pain and suffering*' and '*loss of amenities of life*'. It is submitted that the '*medical expenses*' incurred on treatment of *Smt. Savitri* was ₹10 lacs, but the Tribunal has erred in granting '*medical expenses*' of ₹51,000/- only.

10. In the case of Injured-*Madhu*, it is submitted that in view of Supreme Court's decision in *Arun Kumar (Supra)*, compensation granted by the Tribunal on account of disability suffered by Injured-*Madhu* ought to have been assessed by taking her notional income to be ₹36,000/- *per annum* and multiplier of 15 ought to have been applied. Reliance is placed upon Supreme Court's decision in *Kavita (supra)* to seek '*attendant charges*' of ₹2,000/- per month and while taking her life expectancy to be 55 years, it is claimed that '*attendant charges*' payable to Injured-*Madhu* come to ₹6,50,000/-. To seek compensation of ₹3 lacs each under the head of '*pain and suffering*' and '*loss of amenities of life*', reliance is again placed upon Supreme Court's decision in *Kavita (supra)*. It is further submitted that the '*medical expenses*' incurred on treatment of Injured-*Madhu* was ₹10 lacs, but the Tribunal has erred in granting '*medical expenses*' of ₹66,473/- only. It is next submitted that no compensation under the head of '*recurring medical expenses*' has been granted by the Tribunal and so, enhancement of compensation granted to injured-*Madhu* sought is to the tune of ₹26 lacs odd.

11. In case of Injured-*Latika*, it is submitted that she was bedridden for

a period of about one year, but the Tribunal has erred in assessing her '*loss of income*' only for a period of four months. It is further submitted that the Tribunal has erred in not granting any compensation under the head of '*loss of future prospects*' as she was a bright student, aspiring to be a Model and so, compensation of ₹5 lacs under the head of '*loss of future prospects*' is sought. Reliance is also placed upon Supreme Court's decision in *Kavita (supra)* to seek compensation of ₹3 lacs under the head of '*pain and suffering*'. It is submitted that the '*medical expenses*' incurred on treatment of Injured-Latika was ₹2.5 lacs, but the Tribunal has erred in granting '*medical expenses*' of ₹19,000/- odd. It is also submitted that towards '*special diet*', ₹1.5 lacs ought to have been granted whereas ₹5,000/- only has been awarded by the Tribunal to her. It is submitted that due to the injuries suffered by Injured-Latika in this accident, she has suffered '*loss of marriage prospects*' and so, compensation of ₹2.5 lacs ought to have been granted under this head, whereas no compensation has been granted by the Tribunal under this head.

12. On the contrary, learned counsel for Insurer supports the impugned Awards and submits that the compensation granted by the Tribunal is just and proper and these appeals deserve to be dismissed.

13. Upon hearing and on perusal of impugned Awards, evidence on record and the decisions cited, I find that the Tribunal has rightly concluded that the negligence was of driver of the offending vehicle, i.e. *Jeep* and not of the driver of the insured vehicle, i.e. *Indica*. Reliance placed by Claimants' counsel upon decision in *Alka Mangla (supra)* is

out of context as the findings in the instant case, on negligence aspect are unassailable. Since the negligence was of the driver of the offending vehicle and was not of the driver of the insured vehicle, therefore, liability cannot be fastened upon the Insurer to pay the awarded compensation. It is matter on record that *Savitri* had died after about four years of this accident and there is no basis to conclude that she died due to injuries suffered by her in this accident. Therefore, the Tribunal has rightly assessed the compensation payable to the legal heirs of deceased-*Savitri* due to the injuries sustained by her in this accident. It is also matter of record that deceased-*Savitri* had not sustained any disability due to injury caused to her in this accident and so, the Tribunal has rightly not granted any compensation to her under the head of '*loss of amenities of life*'. In light of the evidence led, the compensation granted to the legal heirs of deceased-*Savitri* under the head of '*special diet, conveyance charges, attendant charges and medical bills*' is found to be adequate and is thus maintained. Reliance placed by Claimants' counsel upon Supreme Court's decision in *Arun Kumar (supra)* and *Kavita (supra)* is misplaced as the quantum of compensation under the head of '*pain and suffering*' granted in the said decisions is in altogether different facts. In the instant case, the compensation of ₹50,000/- granted to the legal heirs of deceased-*Savitri* under the head of '*pain and suffering*' is found to be adequate and is thus maintained. In the considered opinion of this Court, no case for enhancement of compensation or to shift the liability upon the Insurer of the insured vehicle is made out.

14. In case of Injured-*Madhu*, I find that she had sustained 48%

permanent disability in relation to left ankle and knee. In light of the evidence on record, I find that the Tribunal has rightly assessed her Functional Disability at 25% in relation to whole body. Injured-*Madhu* was aged 42 years on the day of the accident and she claims to be earning ₹5,000/- per month by doing tailoring work. However, no evidence in this regard was led and the Tribunal has assessed her income on minimum wages payable to an unskilled worker. Since Injured-*Madhu* was a housewife, therefore, in view of Supreme Court's decision in *Jitendra Khimshankar Trivedi & Ors. v. Kasam Daud Kumbhar & Ors.*, (2015) 4 SCC 237, her income has to be assessed at ₹3,000/- per month on notional basis. Injured-*Madhu* was aged 42 years and so, the Tribunal has rightly applied the multiplier of 14. In view of Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.*, (2017) 16 SCC 680, addition of 25% towards 'future prospects' has to be made. Accordingly, compensation payable to Injured-*Madhu* under the head of 'loss of earning capacity' is reassessed as under: -

$$₹3,000/- \times 12 \times 125/100 \times 14 \times 25/100 = ₹1,57,500/-$$

15. In light of the evidence led by Injured-*Madhu*, compensation under the 'non-pecuniary heads' and 'medical expenses' as well as 'attendant charges' granted by the Tribunal is found to be adequate and is accordingly maintained. In view thereof, the compensation payable to Injured-*Madhu* is reassessed as under: -

Sl. No.	Compensation under various heads	Award Amount
1.	Loss of Income	Rs. 28,940/-

2.	Loss of future earning capacity	Rs. 1,57,500/-
3.	Pain and suffering	Rs. 50,000/-
4.	Loss of enjoyment of amenities of life	Rs. 40,000/-
5.	Conveyance and special diet	Rs. 10,000/-
6.	Medical expenses	Rs. 66,473/-
7.	Attendant charges	Rs. 10,000/-
Total		Rs. 3,62,913/-

16. In case of Injured-*Latika*, aged 18 years, I find that she was a student and was pursuing graduation and so, the Tribunal has erred in assessing her income on the basis of minimum wages of an unskilled worker. Although Injured-*Latika* has claimed that she was earning ₹4,000/- per month by giving tuition, but there is no tangible evidence in support of this assertion. Injured-*Latika* has not suffered any permanent disability. There is no basis to conclude that Injured-*Latika* had any qualification/potential to become a Model and so, the '*future prospects*' of Injured-*Latika* cannot be gauged. Since Injured-*Latika* was pursuing graduation, therefore, her income ought to be assessed on minimum wages payable to a matriculate, which, at the relevant time, were ₹3342.90/- per month, rounded off to ₹3343/- per month. The Tribunal has assessed the '*loss of income*' for a period of four months on the basis of the evidence led. The '*loss of income*' is accordingly reassessed as under: -

$$₹3343/- \times 4 = ₹13,372/-$$

17. There is nothing on record to conclude that due to injuries suffered by Injured-*Latika*, she had suffered any disfiguration and so, the Tribunal has rightly not granted any compensation under this head. In the

considered opinion of this Court, the compensation granted to Injured-*Latika* under the '*non pecuniary heads*' is just and proper and so, no case for enhancement of compensation under the head of '*pain and suffering*', etc., is made out. Even the compensation under the heads of '*special diet*', '*attendant charges*', etc. appears to be justified and is thus maintained. The compensation payable to Injured-*Latika* is reassessed as under: -

Sl. No.	Compensation under various heads	Award amount
1.	Pain and suffering	₹30,000/-
2.	Special diet	₹5,000/-
3.	Conveyance Charges	₹5,000/-
4.	Attendant Charges	₹20,000/-
5.	Medical Bills	₹19,836/-
6.	Loss of Income	₹13,372/-
Total		₹93,208/-

18. Consequentially, the compensation granted to the legal heirs of deceased-*Savitri* is maintained. However, compensation granted to Injured-*Madhu* by the Tribunal is enhanced from ₹3,26,961/- to ₹3,62,913/- and compensation granted to Injured-*Latika* is also enhanced from ₹91,412/- to ₹93,208/-.

19. With aforesaid modifications in the impugned Awards, the above captioned three appeals are accordingly disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 21, 2018

v