

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

Date of Decision: July 18, 2018

+ MAC.APP. 543/2017 & C.M. Nos. 23290/2017 & 42416/2017

TATA AIG GENERAL INSURANCE CO. LTD Appellant

Through: Mr. Rudra Kahlor, Advocate

Versus

DHARAMBIR SINGH & ORS Respondents

Through: Mr. Pankaj Kr. Deval, Advocate

+ MAC.APP. 550/2017 & C.M. No. 23444/2017

TATA AIG GENERAL INSURANCE CO. LTD Appellant

Through: Mr. Rudra Kahlor, Advocate

Versus

PRIYANKA & ORS Respondents

Through: Mr. Pankaj Kr. Deval, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned two appeals are directed against impugned Award of 27th March, 2017. In the above captioned first appeal, the challenge is to the impugned Award vide which compensation of ₹13,68,792/-with interest @ 9% p.a. has been granted to respondent-Claimants on account of death of one *Sheela Devi*, aged 49 years in a vehicular accident on 20th June, 2015. In the above captioned second appeal, the challenge is to the impugned Award vide which compensation

of ₹ 1,40,000/- with interest @ 9% p.a. has been granted to *Priyanka* aged 24 years who had sustained grievous injuries in this vehicular accident. With the consent of learned counsel for the parties, the above captioned two appeals have been heard together and are being decided together by this common judgment.

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

“It is stated in both the claim petitions that on 20.06.2015, at about 7:30 am, one Smt. Sheela Devi (since deceased) and Smt. Priyanka were co-passengers in vehicle no. HR-30 M-1606 (car Maruti Wagon R) and they were going from Faridabad via Gurgaon to Kalanaur, Bhiwani. The said car was being driven by respondent no.1 at a very high speed, rashly, negligently, without giving any horn and neglecting the traffic rules.

It is further stated that when the offending vehicle crossed toll plaza Bandhwari, DLF Phase-1, Gurgaon, the driver of the offending vehicle lost control and the vehicle overturned, resulting in fatal injuries to Smt. Sheela Devi and grievous injuries to Smt. Priyanka.”

3. On the basis of evidence led, impugned Award has been rendered by Motor Accident Claims Tribunal (*henceforth referred to as “the Tribunal”*) and the breakup of compensation awarded by the Tribunal to legal heirs of deceased-*Smt. Sheela Devi* is as under:-

1.) Loss of dependency	:	₹11,43,792/-
2.) Loss of love and affection	:	₹1,00,000/-
3.) Funeral expenses	:	₹25,000/-
4.) Loss of Consortium	:	₹1,00,000/-
Total :		₹13,68,792/-

4. The breakup of compensation awarded by the Tribunal to Injured-

Priyanka is as under:-

Head of Compensation	Amount(in Rs.)
Pain & Suffering	₹ 40,000/-
Attendant Charges	₹ 30,000/-
Medical Expenses	₹ 19,000/-
Special Diet	₹ 10,000/-
Conveyance	₹ 10,000/-
Mental shock	₹ 5,000/-
Total	₹ 1,40,000/-

5. Challenge to the impugned Award by learned counsel for the Appellant-Insurer is on the ground that negligence of the driver of the insured vehicle is not proved. It is pointed out that no FIR regarding this vehicular accident was registered. It is submitted that as per DD Entry registered at concerned police station in Gurgaon, the accident in question was not due to fault of driver of the insured vehicle. It is next submitted by learned counsel for Insurer that the legal heirs of deceased were not dependent upon him and so, no compensation under the head of '*loss of dependency*' is payable to them. Alternatively, Insurer's counsel submits that the accident in question had taken place in Haryana and so the minimum wages applicable in Haryana ought to have been the basis to assess the loss of income. Insurer's counsel submits that Claimants/Injured had contributed to the happening of this accident as they had not protested against rash and negligent driving of driver of the insured vehicle. So, it is submitted that compensation awarded to the Claimants and the Injured deserves to be accordingly modified.

6. On the contrary, learned counsel for Claimants and the Injured

supports the impugned Award and submits that the compensation awarded is just and fair. So, it is submitted by learned counsel for respondents that these appeals deserve to be dismissed.

7. Upon hearing and on perusal of impugned Award and the evidence on record, I find that Injured-*Priyanka* is an eye-witness of this accident and she has stated in her evidence in no uncertain terms that the insured vehicle in question was being driven at a very high speed and negligently. She has categorically stated in her evidence that insured vehicle had crossed toll plaza Bandhwari, DLF Phase-1, Gurgaon at a very high speed and the driver of the insured vehicle had lost control over the vehicle, due to which the insured vehicle had overturned. It has come in the cross-examination of Injured-*Priyanka* that the driver of insured vehicle was driving the said vehicle rashly since they had left their house. Injured-*Priyanka* has not been cross-examined regarding her telling the driver to drive slowly and so, it cannot be said that the Claimants/Injured had contributed to the happening of the accident.

8. Even on perusal of the General Diary Report registered regarding this accident, I find that this accident had occurred because the insured vehicle was on the slope and on the curve, driver of the insured vehicle lost balance of the vehicle and so, the insured vehicle had overturned. It is quite evident from the above that the negligence was of driver of the insured vehicle, due to which the accident in question took place. Thus, the Insurer cannot be absolved from the liability to pay compensation.

9. So far as grant of compensation under the head of '*loss of dependency*' is concerned, I find that deceased was a housewife and the Tribunal has rightly considered her to be a skilled person and has

assessed '*loss of dependency*' on the basis of minimum wages payable to a skilled person because a house wife takes care of the family. I find no reason to take a different view than the one taken by the Tribunal. However, assessment of the services rendered by a skilled person has to be on minimum wages payable in the State of Haryana and not on the basis of minimum wages payable in Delhi. On the day of the accident, the minimum wages payable to a skilled person in Haryana were ₹6,202/- *per month*. Thus, '*loss of dependency*' is re-assessed as under:-

$$₹6,202/- \times 12 \times 13 \times 2/3 = ₹6,45,008/-$$

10. In view of Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680, compensation of ₹1,00,000/- under the head of '*loss of love and affection*' is disallowed and the funeral expenses are accordingly reduced from ₹ 25,000/- to ₹ 15,000/-. Likewise, compensation of ₹1,00,000/- granted under the head of '*loss of consortium*' is also reduced to ₹ 40,000/-. Compensation of ₹ 15,000/- is granted to legal heirs of the deceased under the head of '*loss of estate*'. Thus, compensation payable to legal heirs of the deceased is re-assessed as under:-

S.No.	Description	Amount
1.	Loss of Dependency	₹6,45,008 /-
2.	Loss of Consortium	₹40,000/-
3.	Funeral Expenses	₹15,000/-
4.	Loss of Estate	₹15,000/-
	Total	₹7,15,008/- (rounded off) ₹7,15,010/-

11. Resultantly, compensation awarded to legal heirs of the deceased is reduced from ₹13,68,792/- to ₹7,15,010/-. The modified compensation shall carry interest @ 9% p.a. and it be released to the Claimants in the ratio and manner as indicated in the impugned Award.

12. During the course of hearing, it was pointed out by learned counsel for the parties that the Tribunal has erred in totalling the compensation awarded to Injured-*Priyanka* and instead of ₹1,40,000/-, the compensation awarded to her is ₹1,14,000/-. In the face of evidence on record, I find that the quantum of compensation awarded to Injured-*Priyanka* is reasonable and no case is made out for reducing the quantum of compensation of ₹1,14,000/- granted to her.

13. Consequentially, the above captioned first appeal is partly allowed in the aforesaid terms, whereas the above captioned second appeal stands dismissed being without merit. Compensation awarded to Injured-*Priyanka* be released forthwith. Statutory deposit and excess deposit, be promptly refunded to appellant-*Insurer*.

14. With aforesaid directions, both these appeals and the applications are accordingly disposed of.

(SUNIL GAUR)
JUDGE

JULY 18, 2018
SRwt