

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

Date of Decision: July 24, 2018

(i) + **MAC.APP. 946/2016**

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD

..... Appellant

Through: Mr. M.P. Sahi, Advocate

Versus

PAPPU & ORS.

..... Respondents

Through: Mr. Mukesh Kumar Sinha,
Advocate for respondents No.1 & 2
Mr. Bhupinder Narula, Advocate for
respondents-Claimants

(ii)+ **MAC.APP. 948/2016**

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD.

..... Appellant

Through: Mr. M.P.Sahi, Advocate

Versus

PAPPU & ORS.

..... Respondents

Through: Mr. Mukesh Kumar Sinha,
Advocate for respondents No.1 & 2
Mr. Bhupinder Narula, Advocate for
respondent-Injured

(iii)+ **MAC.APP. 949/2016**

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD.

..... Appellant

Through: Mr. M.P.Sahi, Advocate

Versus
PAPPU & ORS. Respondents
Through: Mr. Mukesh Kumar Sinha,
Advocate for respondents No.1 & 2
Mr. Bhupinder Narula, Advocate for
respondent-Injured

(iv) + **MAC.APP. 950/2016**

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD.
..... Appellant
Through: Mr. M.P.Sahi, Advocate

Versus
PAPPU & ORS. Respondents
Through: Mr. Mukesh Kumar Sinha,
Advocate for respondents No.1 & 2
Mr. Bhupinder Narula, Advocate for
respondents-Claimants

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

C.M.No. 42285/2016 (u/S 151 CPC) in MAC.APP. 946/2016

C.M.No.42362/2016 (u/S 151 CPC) in MAC.APP. 948/2016

C.M.No.42365/2016 (u/S 151 CPC) in MAC.APP. 949/2018

C.M.No. 42367/2016 (u/S 151 CPC) in MAC.APP. 950/2016

There is delay of 37 days in filing the accompanying appeals.

The reasons stated in the applications provide sufficient cause to condone the delay occasioned. The applications are allowed and delay is condoned.

The above captioned four applications are disposed of.

C.M.No. 44345/2016 (u/Order 6 Rule 17 CPC) in MAC.APP. 946/2016

By way of this application, name of *Smt. Saraswati Devi*, mother of deceased, is sought to be added in the Memo of Parties on the plea that due to inadvertence, her name was left out although her name finds mention in the modified Award. Counsel for appellant has handed over certified copy of order of 8th June, 2017 of Motor Accident Claims Tribunal, which reveals that name of *Smt. Saraswati Devi*, has been added as a party to the claim petition and upon apportionment, part of the compensation amount has been awarded to her.

In view of above, the application is allowed and Amended Memo of Parties and Amended Appeal of 23rd November, 2017 filed alongwith this application is taken on record.

The application is disposed of.

MAC.APP. 946/2016

MAC.APP. 948/2016

MAC.APP. 949/2016

MAC.APP. 950/2016

1. In the above captioned four appeals, the challenge is to the impugned Award of 4th July, 2016 passed by Motor Accident Claims Tribunal (*henceforth referred to as the "Tribunal"*) pertaining to a vehicular accident which took place on 28th March, 2012. Since these appeals arise out of a 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.

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

"The relevant facts for the disposal of these cases are that on 28/03/2012, Umesh Chandra Singh, Smt. Jamuna Pal, Smt. Pushpa Badwal and Sh. Hukam Singh Badwal were travelling in Taxi bearing no. DL-1YC-4700 which was being driven by Sh. Pappu, respondent no.1 in rash and negligent manner. But when they requested Sh. Pappu, respondent no.1 to drive carefully he did not pay any heed and kept on driving the Taxi in rash and negligent manner. When they reached near Mulya Village, Devprayag, Uttranchal, suddenly Respondent no.1/Sh. Pappu, lost control over the said taxi and fell into the gorge and as a result of the accident Sh. Umesh Chandra Singh and Smt. Pushpa Badwal sustained grievous injuries whereas Smt. Jamuna Pal and Sh. Hukam Singh Badwal sustained fatal injuries".

3. To render the impugned Award, the Tribunal has relied upon evidence of Injured- *Umesh Chandra* and *Pushpa Badwal* and Claimants (*legal heirs of deceased Jamuna Pal & Hukam Singh Badwal*) and other documentary evidence on record.

4. In the above captioned first appeal [MAC.APP. 946/2016 (arisen from case No.326/12/14)], the Tribunal has awarded compensation of ₹78,15,032/- with interest @ 10% p.a. to legal heirs of deceased-*Hukam Singh*, who was aged 50 years on the day of the accident and was working as ACS in the Office of Additional Commissioner of Custom, IGI Airport, New Delhi. However, the Tribunal vide order of 8th June, 2017, has corrected the impugned Award and granted compensation of ₹87,88,786/- with interest @ 10% p.a. to legal heirs of deceased-*Hukam Singh* and the breakup of compensation awarded is as under:-

Loss of dependency	₹83,13,786/-
Loss of love and affection to Children	₹2,00,000/-
For Funeral Expenses	₹25,000/-
Loss of estate	₹1,00,000/-
Loss of consortium	₹1,00,000/--
Loss of love and affection towards parents	₹50,000/-
Total	₹87,88,786/-

5. In the above captioned second appeal [MAC.APP. 948/2016 (arisen from case No.327/12/14)], the Tribunal has awarded

compensation of ₹86,336/- to Injured-*Pushpa Badwal*, a house wife, who had sustained grievous head injuries in this accident, while taking her income on minimum wages payable to a matriculate as on the date of accident. However, the Tribunal vide order of 8th June, 2017, has corrected the impugned Award and granted compensation of ₹96,336/- with interest @ 10% p.a. to Injured-*Pushpa Badwal*. The breakup of compensation awarded to her is as under:-

Loss of income	₹24,336/-
Pain & Suffering	₹30,000/-
Conveyance and special diet	₹ 30,000/-
Attendant charges	₹12,000/-
Total	₹96,336/-

6. In the above captioned third appeal, [MAC.APP. 949/2016 (arisen from case No.325/12/14)], the Tribunal has awarded compensation of ₹1,80,000/- with interest @ 10% p.a. to Injured- *Umesh Chandra Singh*, who was working in Northern Eastern Railways and had sustained grievous head injuries. The breakup of compensation awarded to him is as under:-

Loss of income	₹1,08,000/-
Pain & Suffering	₹30,000/-
Conveyance and special diet	₹30,000/-
Attendant charges	₹12,000/-
Total	₹1,80,000/-

7. In the above captioned fourth appeal [MAC.APP. 950/2016 (arisen from case No.324/12/14)], the Tribunal has awarded compensation of ₹14,52,108/- with interest @ 10% p.a. to legal heirs of deceased *Jamuna*, aged 28 years, a house wife, while taking her income at ₹7,358/-p.m. i.e. the minimum wages payable to a non-matriculate on the day of accident. The breakup of compensation awarded to legal heirs of deceased *Jamuna* is as under:-

Loss of dependency	₹9,27,108/-
Loss of love and affection to Children	₹3,00,000/-
For Funeral Expenses	₹ 25,000/-
Loss of estate	₹ 1,00,000/-
Loss of consortium	₹1,00,000/-
Total	₹14,52,108/-

8. Learned counsel for appellant (*hereinafter referred to as Insurer*) challenges the impugned Award on the ground that the compensation granted to Claimants in the above captioned first appeal is on the higher side, as gross salary of deceased *Hukam Singh* has been taken by the Tribunal at ₹6,55,920/- *per annum*, whereas his net salary of ₹4,90,000/- ought to have been taken into consideration while assessing “*loss of dependency*”. Counsel for Insurer submits that deduction of 10% ought to have been made from the salary of deceased towards income tax and since deceased was of 50 years of age, the applicable multiplier is of 11

and not 13. On the aspect of negligence, counsel for Insurer submits that no charge-sheet was filed against driver of the offending vehicle and so, finding of negligence returned against the driver of insured vehicle is unjustified.

9. Counsel for Insurer points out that as per evidence of *Amit Rastogi (R3W1)*, Clerk, Licensing Authority, *Farukhabad*, UP, the driving license of the insured vehicle was fake and so, no liability can be fastened upon the Insurer to pay the awarded compensation. It is also pointed out by counsel for Insurer that there is no endorsement on the driving license permitting driving in a hilly area. So, modification of impugned Award is sought by counsel for Insurer.

10. On the other hand, counsel for respondent-*Claimants* and *Injured* supports the impugned Award and submits that while assessing “*loss of dependency*” of deceased *Hukam Singh*, the Tribunal has rightly taken into consideration the income of deceased. Reliance is placed upon Supreme Court’s decision in *K.R.Madhusudan & Ors. Vs. Administrative Officer & Anr.* 2011 III AD (SC) 161 in support of afore-noted submission. Counsel for claimants submits that deceased *Hukam Singh* was aged 50 years at the time of accident and in view of Supreme Court’s decision in *Sarla Verma (Smt.) & Ors. Vs. Delhi Transport Corporation & Anr.* (2009) 6 SCC 121, the Tribunal has rightly applied multiplier of 13. Thus, it is submitted by counsel for Claimants that the compensation granted to the Claimants and Injured is fair and just and so, these appeals deserve dismissal.

11. Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that merely because charge-sheet has not been issued against driver and owner of offending vehicle in question, it does not absolve Insurer from the liability to pay the compensation awarded in view of eye witness account which clearly spells out negligence of driver of the Insured vehicle. As regards driving license in question, I find that *Amit Rastogi (R3W1)*, Clerk, Licensing Authority, Farukhabad, UP, does not categorically state that driving license (*Ex. R3W1/1*) was not issued by the said Authority. In the considered opinion of this Court, the Tribunal has rightly concluded that negligence aspect has not been conclusively proved. On the aspect of permission to drive in hilly area, there is no cross-examination of this witness (*R3W1*). So, the finding of rash and negligent driving returned by the Tribunal against driver of Insured vehicle is fully justified.

12. On the aspect of quantum of compensation awarded to Claimants of deceased *Hukam Singh*, I find that Supreme Court in *K.R.Madhusudan (Supra)* has reiterated that where the annual income is in the taxable range, the word “*actual salary*” should be read as “*actual salary less tax*”. The pay slip of deceased for the month of March, 2012 on record shows that he was having total gross income of ₹6,55,920/- *per annum* and after deduction of payable tax of ₹30,000/- approximately (*in terms of Form -16 of financial year 2011-12 on record*), the net income of deceased was ₹6,25,920/-*per annum*. In view of Supreme Court’s

decision in *Sarla Verma (Supra)*, I find that the Tribunal has rightly applied multiplier of 13. In face of Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680, the addition towards "*future prospects*" ought to be 15% and not 30%, as awarded by the Tribunal. Hence, "*loss of dependency*" is accordingly reassessed as under:-

$$₹6,25,920/- \text{ p.a.} \times \frac{3}{4} \times 13 \times \frac{115}{100} = ₹70,18,128/-$$

13. The compensation granted under the '*non pecuniary heads*', needs to be brought in tune with Supreme Court's decision in *Pranay Sethi (Supra)*. Accordingly, compensation granted by the Tribunal under the head of "*loss of love & affection*" is disallowed. The "*funeral expenses*" are reduced from ₹25,000/- to ₹15,000/- and "*loss of estate*" is also reduced from ₹1,00,000/- to ₹15,000/-. The compensation granted under the head "*loss of consortium*" is also reduced from ₹1,00,000/- to ₹40,000/-.

14. Consequentially, the compensation payable to legal heirs of deceased *Hukam Singh* is reassessed as under:-

Loss of dependency	₹70,18,128/-
Funeral Expenses	₹15,000/-
Loss of estate	₹15,000/-
Loss of consortium	₹40,000/-
Total	₹70,88,128/-

15. In case of deceased *Jamuna*, this Court finds that the Tribunal has

rightly taken income of deceased at ₹7,358/- p.m. while assessing “*loss of dependency*”. However, compensation granted under the “*non pecuniary heads*”, needs to be brought in tune with Supreme Court’s Constitution Bench decision in *Pranay Sethi (supra)*. Accordingly, compensation granted by the Tribunal under the head of “*loss of love & affection*” is disallowed. The “*funeral expenses*” are reduced from ₹25,000/- to ₹15,000/- and “*loss of estate*” is also reduced from ₹1,00,000/- to ₹15,000/-. The compensation granted under the head “*loss of consortium*” is also reduced from ₹1,00,000/- to ₹40,000/-.

16. Consequently, the compensation payable to legal heirs of deceased *Jamuna* is reassessed as under:-

Loss of dependency	₹9,27,108/-
Funeral Expenses	₹15,000/-
Loss of estate	₹15,000/-
Loss of consortium	₹40,000/-
Total	₹9,97,108/-

17. Resultantly, the compensation awarded to legal heirs of deceased *Hukam Singh* is reduced from ₹87,88,786/- to ₹70,88,128/-. Similarly, compensation awarded to legal heirs/ Claimants of deceased *Jamuna* is reduced from ₹14,52,108/- to ₹9,97,108/-. As regards the compensation awarded to Injured–*Pushpa Badwal* and *Umesh Chandra Singh* is concerned, I find that in view of the nature of grievous injuries suffered by them, the compensation granted to them by the Tribunal is just and fair. So far as interest granted by the Tribunal is concerned, 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, in the instant case, it is directed that the awarded compensation shall carry interest @ 9% *per annum*. The modified compensation be released to Claimants and the Injured, in the ratio and manner, as indicated in the impugned Award. Statutory deposit along with excess deposit, if any, be refunded to the Insurer.

18. With aforesaid directions, the above captioned appeals are disposed of.

(SUNIL GAUR)
JUDGE

JULY 24, 2018

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