

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

Date of Decision: July 18, 2018

+ **MAC.APP. 1038/2016**

THE NEW INDIA ASSURANCE CO LTD Appellant
Through: Mr. Parveen K. Mendiratta, Adv.

Versus

RAMESH & ORS Respondents
Through: Ms. Nitika Gupta, Adv. for R-1.

+ **MAC.APP. 1039/2016**

THE NEW INDIA ASSURANCE CO LTD Appellant
Through: Mr. Parveen K. Mendiratta, Adv.

versus

MASTER ROHIT & ORS Respondents
Through: Ms. Nitika Gupta, Adv. for R-1.

+ **MAC.APP. 1041/2016**

THE NEW INDIA ASSURANCE CO LTD Appellant
Through: Mr. Parveen K. Mendiratta, Adv.

versus

MEENA & ORS Respondents
Through: Ms. Nitika Gupta, Adv. for R-1.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned three appeals relate to a vehicular accident which took place on 15th October, 2012 in which a motorcycle driver and two pillion riders were injured. Vide separate impugned Awards of even date, that is, 22nd September, 2016, compensation has been granted to the respondents-Injured by the Tribunal. With the consent of learned counsel for the parties, the above captioned three appeals have been heard together and are being decided together by this common judgment.

2. In the above captioned first appeal, the challenge is to impugned Award vide which compensation of ₹ 3,10,000/- with interest at the rate of 9% p.a. has been granted to respondent/Injured- *Ramesh* on account of grievous injury sustained by him in this vehicular accident. In the above captioned second appeal, the impugned Award under challenge grants compensation of ₹ 65,000/- with interest at the rate of 9% p.a. to respondent/Injured-*Rohit* on account of the injuries suffered by him in this vehicular accident. The above captioned third appeal questions impugned Award vide which compensation of ₹60,000/- with interest @ 9% p.a. has been granted to respondent/ Injured-*Meena* on account of simple injuries sustained by her in this vehicular accident.

3. The factual background of these appeals as noticed in the impugned Awards is as under :-

“I am residing at address mentioned above. Today i.e. 15.10.2012 at about 8.30 a.m, I along with my wife (Meena) and son (Rohit) was going to Bahadur Garh, driving my motor-cycle no. DL4S BK 7346 When I reached old machhi market chowk, Sultanpuri main road, a tractor was seen

coming from bus stand of bus route no. 908. It was being driven at a very fast speed, rashly and negligently, by respondent, it hit my motor-cycle. We all fell down on road along with our motor-cycle and suffered injuries. The driver of said tractor was overpowered by public. I suffered injuries on my left leg while my son suffered injuries on his right leg. My motor-cycle was also damaged. Said accident took place due to rashness and negligence of driver of said tractor.”

4. To render the impugned Award, learned Motor Accident Claims Tribunal (*hereinafter referred to as the “Tribunal”*) has relied upon evidence of injured and the documentary evidence on record. On the strength of evidence recorded, impugned Award has been rendered. The breakup of compensation awarded by Tribunal to Injured-*Ramesh* is as under:-

Head of Compensation	Amount(in Rs.)
Medical Expenses	₹ 14,994/-
Special Diet	₹ 25,000/-
Conveyance	₹ 20,000/-
Pain & Suffering	₹ 1,00,000/-
Loss of enjoyment of life	₹ 1,50,000/-
Total	₹ 3,09,994/- (rounded off) ₹ 3,10,000/-

The breakup of compensation awarded by Tribunal to Injured-*Master Rohit* is as under:-

Head of Compensation	Amount(in Rs.)
Medical Expenses	₹ 10,000 /-
Special Diet & Conveyance	₹ 5,000/-
Pain & Suffering	₹ 50,000/-
Total	₹ 65,000/-

The breakup of compensation awarded by Tribunal to Injured-*Meena* is as under:-

Head of Compensation	Amount(in Rs.)
Medical Expenses	₹ 10,000 /-
Pain & Suffering	₹ 50,000/-
Total	₹ 60,000/-

5. Learned counsel for appellant-Insurer assails impugned Awards on the ground that the Tribunal has observed that the driver of the insured vehicle- tractor was having driving licence for motorcycle and light motor vehicle (private) but he was driving a tractor with trolley which is a commercial vehicle. It is submitted by learned counsel for the Insurer that despite observing so, the Tribunal has erred in not granting recovery rights to the Insurer against the driver and owner of the tractor with trolley. It is also submitted on behalf of the Insurer that the Injured-*Ramesh* was not having a valid driving licence and thus contravened provisions of *Motor Vehicles Act, 1988* as there were two pillion riders on the motorcycle driven by him. It is also pointed out that one of the pillion

riders, *Meena* was not wearing a helmet. So, it is submitted that it is a case of contributory negligence and thus, compensation awarded deserves to be suitably reduced.

6. On the contrary, learned counsel for respondents-injured supports the impugned Award and maintains that the compensation granted is just and proper.

7. Upon hearing and on perusal of impugned Award and the evidence on record, I find that Injured-*Ramesh* in his evidence has categorically deposed that driver of tractor in question was driving the tractor rashly and negligently towards Aman Vihar without giving any signal and he turned his tractor which led to happening of this accident and after this accident, the driver of tractor in question had tried to flee away but he was caught by the public at the spot and the site plan of the spot was drawn. The cross-examination of Injured-*Ramesh*, who was driving the motorcycle in question reveals that there was no worthwhile cross-examination of this witness-*Ramesh* on the negligence aspect.

8. Perusal of evidence of Injured-*Ramesh* and the site plan of the spot persuades this Court to hold that the negligence was of driver of the insured vehicle-*tractor* and no inference of contributory negligence arises from a stray line cross-examination of the Injured-*Ramesh* regarding his not carrying driving licence on the date of accident. The injured who was pillion rider was not wearing a helmet but on this account contributory negligence cannot be attributed to her. The compensation awarded to the Injured appears to be just and reasonable. No case for interfering with the

impugned Awards is made out. Hence these appeals are accordingly dismissed.

9. The above captioned appeals are disposed of with direction that statutory deposit, if any, be refunded to the Insurer.

(SUNIL GAUR)
JUDGE

JULY 18, 2018
SRwt