

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

Date of Decision: July 30, 2018

+ **MAC.APP. 979/2016 & CM 43600/2016**
+ **MAC.APP. 981/2016 & CM 43672/2016**
+ **MAC.APP. 982/2016 & CM 43709/2016**
+ **MAC.APP. 985/2016 & CM 43878/2016**

FUTURE GENERALI INDIA INSURANCE CO LTD....Appellant
Through: Mr. Rajeev M. Roy, Advocate

Versus

UMESH CHAND JAIN & ORS
RASHMIKA JAIN & ORS
SWATI JAIN & ORS
AJAY KUMAR JAIN & ORSRespondents
Through: Mr. Sanjay Kumar Singh and Mr.
Rakesh Satija, Advocates for
respondents-Claimants

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 24th September, 2016 rendered by Motor Accident Claims Tribunal (*henceforth referred to as the "Tribunal"*) grants compensation to respondents-Claimants on account of death of a businessman-Ashish S/o Rajender Kumar Jain, aged 34 years; a Senior Finance Officer-Abhishek S/o Ajay Kumar Jain, aged 28 years and an Executive-Nidish, son of Umesh Chand Jain, aged 28 years and a Sales Executive-Abhishek S/o Anand Jain, aged 29 years.

2. Since these four appeals arise out of aforesaid 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.

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

“The facts common to all the petitions are like this. On 28.04.2012 Ashish Jain along with Nidish Jain, Abhishek Jain s/o Ajay Kumar Jain and Abhishek Jain s/o Sh. Anand Jain was going from Delhi to Guptidham, Gannaur, District Sonapat, Haryana in vehicle bearing registration no. DL-2CR-1397. Sh. Rajender Kumar, father of Sh. Nidish Jain, was also going to the same place in his vehicle bearing no. DL-7CH-4848. They reached at 11.00 p.m. in front of Tempo union bahalgarh, GT Road, Sonapat, Haryana. One truck bearing no. HR-63-8603 bearing driven by respondent no.1 came in a high speed and in a rash and negligent manner and hit against the car bearing registration no. DL.2CR-1397 as a result the occupants of the car namely Nidish Jain, Ashish Jain and Abhishek Jain s/o Ajay Kumar Jain sustained injuries and succumbed to the injuries in the Civil / General hospital, Sonapat Haryana. Sh. Abhishek Jain S/o Anand Jain sustained multiple grievous injuries who was referred by General Hospital, Sonapat to Trauma Hospital for further treatment. FIR No.13/12, U/s 279/337/304A IPC PS, Rai, District Sonapat, Haryana was registered against the respondent No.1. ”

4. To render the impugned Award, the Tribunal has relied upon evidence of Claimants/legal heirs of deceased and the other evidence on record. The compensation awarded by the Tribunal to Claimants with

interest @ 12% *per annum* in these appeals, is as under:-

S. No.	Name of deceased	Compensation Awarded
1.	Ashish S/o Rajender Kumar Jain	₹15,86,608/-
2.	Abhishek S/o Ajay Kumar Jain	₹30,22,325/-
3.	Nidish S/o Umesh Chand Jain	₹21,53,900/-
4.	Abhishek S/o Anand Jain	₹15,73,491/-

5. Despite service, the driver and owner of the insured vehicle have not contested the impugned Award before this Court.

6. The challenge to 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 *Ashish (since deceased)*. Another ground taken by learned counsel for appellant-*Insurer* is that the compensation granted by the Tribunal under the '*non-pecuniary heads*' is exorbitant and it needs to be brought in tune with Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680. So, it is submitted that the impugned Award deserves to be suitably modified.

7. On the contrary, learned counsel for respondents-*Claimants* supports the impugned Award and submits that the compensation granted by the Tribunal is just and fair and so, these appeals deserve to be dismissed.

8. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that evidence of eye-witness-*Rajender Kumar (PW-2)* coupled with evidence of *Dr. Saroj (R3W1)* makes it clear that the accident in question took place as the truck was

changing lane and it came in front of the car and that is how the accident in question had taken place. It can be so gathered from the deposition of *Dr. Saroj (R3W1)* and perusal of Crime Scene Report (*Ex.R3W1/1*). So, the plea of contributory negligence put forth on behalf of appellant-Insurer is negated.

9. As regards compensation granted by the Tribunal under the '*non-pecuniary heads*', I find that it needs to be brought in tune with Supreme Court's Constitution Bench decision in *Pranay Sethi (supra)*. Accordingly, the compensation granted by the Tribunal to the legal heirs of deceased-Ashish S/o Rajender Kumar Jain under the head of '*loss of love and affection*' is disallowed. The compensation granted under the head '*loss of estate*' is reduced from ₹25,000/- to ₹15,000/-. Similarly, '*funeral expenses*' are also reduced from ₹25,000/- to ₹15,000/- and even compensation granted under the head '*loss of consortium*' is reduced from ₹1,00,000/- to ₹40,000/-. However, the compensation granted by the Tribunal under the head of '*loss of dependency*' is found to be fair and reasonable and is accordingly maintained. As such, the compensation payable to the legal heirs of deceased-Ashish S/o Rajender Kumar Jain is reassessed as under: -

Loss of dependency	₹13,36,608/-
Loss of Consortium	₹40,000/-
Loss of Estate	₹15,000/-
Funeral Expenses	₹15,000/-
Total	₹14,06,608/-

10. While maintaining the compensation granted by the Tribunal to the legal heirs of deceased-Abhishek S/o Ajay Jain under the head of '*loss of*

dependency', compensation granted by the Tribunal under the head of '*loss of love and affection*' is disallowed. The compensation granted under the head '*loss of estate*' is reduced from ₹50,000/- to ₹15,000/-. Similarly, '*funeral expenses*' are also reduced from ₹25,000/- to ₹15,000/-. As such, the compensation payable to the legal heirs of deceased-*Abhishek S/o Ajay Kumar Jain* is reassessed as under: -

Loss of dependency	₹28,47,325/-
Loss of Estate	₹15,000/-
Funeral Expenses	₹15,000/-
Total	₹28,77,325/-

11. While upholding the compensation granted by the Tribunal to the legal heirs of deceased-*Abhishek S/o Anand Jain* under the head of '*loss of dependency*' and '*medical expenses*', compensation granted by the Tribunal under the head of '*loss of love and affection*' is disallowed. The compensation granted under the head '*loss of estate*' is reduced from ₹25,000/- to ₹15,000/-. Similarly, '*funeral expenses*' are also reduced from ₹25,000/- to ₹15,000/- and compensation granted under the head '*loss of consortium*' is reduced from ₹1,00,000/- to ₹40,000/-. As such, the compensation payable to the legal heirs of deceased-*Abhishek S/o Anand Jain* is reassessed as under: -

Loss of dependency	₹11,59,808/-
Loss of Consortium	₹40,000/-
Loss of Estate	₹15,000/-
Funeral Expenses	₹15,000/-
Medical expenses	₹1,63,683/-
Total	₹13,93,491/-

12. The compensation granted by the Tribunal to the legal heirs of

deceased-*Nidish S/o Umesh Chand Jain* under the head of 'loss of dependency' is justified but compensation granted by the Tribunal under the head of 'loss of love and affection' is disallowed. The compensation granted under the head 'loss of estate' is reduced from ₹50,000/- to ₹15,000/-. Similarly, 'funeral expenses' are also reduced from ₹25,000/- to ₹15,000/-. As such, the compensation payable to the legal heirs of deceased-*Nidish S/o Umesh Chand Jain* is reassessed as under: -

Loss of dependency	₹19,78,900/-
Loss of Estate	₹15,000/-
Funeral Expenses	₹15,000/-
Total	₹20,08,900/-

13. So far as interest on the awarded compensation 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, respondents-*Claimants* are also entitled to interest @ 9% *per annum*. Accordingly, re-assessed compensation shall carry interest @ 9% *per annum* instead of 12% *per annum* as granted by the Tribunal. The modified compensation with interest @ 9% *per annum* be disbursed to respondents-*Claimants* by the Tribunal in the ratio and manner as indicated in the impugned Award. The recovery rights granted by the Tribunal to appellant-*Insurer* qua the owner and driver of the insured vehicle are maintained. Statutory deposit alongwith excess deposit, if any, be refunded to appellant-*Insurer*.

14. Consequentially, compensation awarded by the Tribunal to legal heirs/*Claimants* of deceased-*Ashish* is reduced from ₹15,86,608/- to

₹14,06,608/- and to legal heirs of deceased-*Abhishek S/o Ajay Kumar* is reduced from ₹30,22,325/- to ₹28,77,325/- and to legal heirs of deceased-*Nidish* is reduced from ₹21,53,900/- to ₹20,08,900/- and to legal heirs of deceased-*Abhishek S/o Anand Jain* is reduced from ₹15,73,491/- to ₹13,93,491/-.

15. With aforesaid directions, the above captioned four appeals and the applications are disposed of.

(SUNIL GAUR)
JUDGE

JULY 30, 2018

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