

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

Date of Decision: August 16, 2018

+ **MAC.APP. 975/2017 & CM 40546/2017**

+ **MAC.APP. 978/2017 & CM 40617/2017**

THE NEW INDIA ASSURANCE CO LTD Appellant

Through: Mr. D.K. Sharma, Advocate

Versus

RAJ RISHI & ORS.

.....Respondents

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL)

1. Impugned Award of 5th September, 2017 rendered by Motor Accident Claims Tribunal (*henceforth referred to as "the Tribunal"*) grants compensation to respondents-*Claimants*, on account of death of a Teacher-*Mahender S/o Harphool*, aged 59 years and 3 months, and a housewife-*Shakuntala w/o Mahender*, aged 53 years, in a vehicular accident, which took place on 17th June, 2015.

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

"Mr. Mahender Singh Maurya and his wife Smt. Shakuntala Devi (the deceased) suffered injuries in a motor-vehicular accident that occurred on 17.06.2015 at 4.30 a.m. at NH-24, opposite Siddharth Vihar

Colony, Vijay Nagar, Ghaziabad, Uttar Pradesh involving Truck bearing registration No. HR 63 7731 (offending vehicle) driven allegedly rashly and negligently by the respondent No. 1 and both died in the consequence. In the context of the said accident, Crime No. 657/15 under Section 279/337/348/427/304-A of the Indian Penal Code, 1860 (IPC) was registered in PS Vijay Nagar.”

3. To render impugned Award, the Tribunal has relied upon evidence of Claimants/legal heirs of deceased and other documentary evidence on record. The compensation awarded by the Tribunal to legal heirs of deceased persons (*hereinafter referred to as Claimants*) with interest @ 9% p.a. in these appeals, is as under:-

S.No.	Name of deceased	Compensation Awarded
1.	Mahender Singh	₹41,71,000/-
2.	Shakuntala	₹10,81,000/-

4. Since the above-captioned two appeals arise out of aforesaid common impugned Award, therefore, these appeals have been heard together and are being decided by this common judgment.

5. While computing the “*loss of dependency*”, the income of deceased-Mahender was assessed by the Tribunal as ₹6,61,762/- *per annum* on the basis of salary record and multiplier of 9 was applied. Deduction of 1/3rd towards “*personal expenses*” was made, but no addition towards “*future prospects*” was made. The break-up of compensation granted by the Tribunal to the legal heirs of deceased-

Mahender is as under:-

1.	<i>Loss of dependency</i>	₹39,71,000/-
2.	<i>Funeral Expenses and Loss of Estate</i>	₹50,000/-
3.	<i>Loss of Love & Affection</i>	₹1,50,000/-
Total		₹41,71,000/-

6. In case of deceased-*Shankuntala*, minimum wages of a non-matriculate were made the basis to assess the “*loss of dependency*”, but no addition towards “*future prospects*” was made. Multiplier of 11 was applied and deduction of 1/3rd towards “*personal expenses*” was made. The break-up of compensation granted by the Tribunal to legal heirs of deceased-*Shankuntla* is as under:-

1.	<i>Loss of dependency</i>	₹8,81,000/-
2.	<i>Loss of Love & Affection</i>	₹1,50,000/-
3.	<i>Funeral expenses and Loss of Estate</i>	₹50,000/-
Total		₹10,81,000/-

7. Impugned Award is assailed by learned counsel for appellant-*Insurer* by disputing involvement of the insured vehicle. Learned counsel for Insurer submits that as per evidence of *Claimant-Raj Rishi*, who had lodged the FIR regarding this accident, deceased persons and maternal uncle of Claimant were going on motor-cycle and when they were about to cross the road, the accident had taken place. It is pointed that the evidence of *Claimant-Raj Rishi* gets demolished from the evidence of eye-witness-*Sushil Kumar (PW-2)*, who in his evidence, has stated that

the motor-cycle was stationary on the side of the road and the accident had occurred when the deceased persons were standing near the motor-cycle. It is submitted that the aforesaid evidence gets demolished from the *Mechanical Inspection Report* of the said motor-cycle, which reveals that there was extensive damage to it. Thus, it is submitted that the manner of taking place of this accident does not stand established and so, Claimants are not entitled to any compensation. It is also pointed out that the eye-witness (*PW-2*) could not identify the insured vehicle. So, it is submitted on this ground also the claim petition ought to have been dismissed.

8. Despite service, respondents have chosen not to contest these appeals before this Court.

9. Upon hearing and on perusal of impugned Award, evidence on record and Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680, I find that *Claimant-Raj Rishi (PW-1)*, had lodged FIR of this case, who is not an eye-witness, and therefore, his evidence on the aspect of negligence of insured vehicle cannot be made the basis to discard the otherwise reliable testimony of eye-witness (*PW-2*). Having scrutinized the evidence of eye-witness (*PW-2*), I find that he may not have been able to identify the insured vehicle in question, but he had given somewhat correct description of the insured truck by calling it a '*canter like vehicle*'. It becomes crystal clear from the evidence of this witness (*PW2*) and the site plan of the place of accident that the insured vehicle had not only hit the deceased persons, who were standing on the side of the road

near their motor-cycle which was in stationary position, but had also hit the aforesaid motor-cycle, resulting in damage to the said motor-cycle.

10. In the face of the afore-referred evidence on record, I find that the Tribunal has rightly concluded that the accident in question had taken place due to rash and negligent driving of the insured vehicle. So far as quantum of compensation granted by the Tribunal is concerned, I find that the Tribunal has rightly assessed the “*loss of dependency*” in case of both the deceased persons.

11. The compensation granted by the Tribunal 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 to legal heirs of deceased- *Mahender* under the head of “*loss of love & affection*” is disallowed. However, “*funeral expenses*” and compensation under the head “*loss of estate*” are reduced from ₹50,000/- to ₹15,000/- each. Accordingly, the compensation payable to legal heirs of deceased-*Mahendra* is reassessed as under:-

1.	Loss of Dependency	₹39,71,000/-
2.	Loss of Estate	₹15,000/-
3.	Funeral Expenses	₹15,000/-
Total		₹40,01,000/-

12. So far as compensation granted by the Tribunal to legal heirs of deceased-*Shakuntala* under the ‘*non pecuniary heads*’ is concerned, it 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*” and compensation under the head “*loss of estate*” are reduced from ₹50,000/- to ₹15,000/- each Accordingly, the compensation payable to legal heirs of deceased-*Shakuntala* is reassessed as under:-

1.	Loss of Dependency	₹8,81,000/-
2.	Funeral Expenses	₹15,000/-
3.	Loss of Estate	₹15,000/-
Total		₹9,11,000/-

13. Consequentially, the compensation awarded by the Tribunal to legal heirs of deceased-*Mahender* is reduced from ₹41,71,000/- to ₹40,01,000/- and compensation granted by the Tribunal to legal heirs of deceased-*Shakuntala* is reduced from ₹10,81,000/- to ₹9,11,000/-. The modified compensation shall carry interest @ 9% p.a. The modified compensation be released forthwith to Claimants in the ratio and manner as indicated in the impugned Award. Statutory deposit alongwith excess deposit, if any, be refunded to appellant-*Insurer*.

14. With aforesaid directions, the above captioned appeals and the pending applications are disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 16, 2018

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