

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

Date of Decision: September 04, 2018

+ **MAC.APP. 1129/2017**

+ **MAC.APP. 174/2018**

MIRA DEVI & ANR.

RAHUL

..... Appellants

Through: Mr. S.N. Parashar, Advocate

Versus

MOHD KHALIL & ORS. (IFFCO TOKIO GENERAL
INSURANCE CO LTD)

..... Respondents

Through: Mr. Arihant Jain & Ms. Shanta
Devi Raman, Advocates for
respondent No.3

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL)

1. Impugned Award of 29th July, 2017 grants compensation of ₹5,10,636/- with interest @ 9% p.a. to legal heirs of deceased-*Prateek Kumar*, a Mechanic, aged 17 years and 11 months, on account of fatal injuries suffered by him in a vehicular accident, which took place on 21st March, 2014. In this accident, an Executive-*Rahul*, aged 16 years and 8 months, had also sustained injuries and vide separate Award of even date, he has been granted compensation of ₹4,83,896/- with interest @ 9% *per annum*.

2. In the above-captioned appeals, the challenge by learned counsel

for Claimants/injured is to impugned Awards on the ground that the finding of contributory negligence on part of deceased is unwarranted and that quantum of compensation granted by the Tribunal is inadequate. Since the impugned Awards arise out of one vehicular accident, 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 Awards, is as under:-

“Brief facts of the case giving rise to the claim Petition are, that on 21.03.2014, the deceased was driving a motorcycle along with one Rahul as a pillion rider and when they reached near Laxmi Niwas Asharam Burari, they were hit by Truck bearing No. HR-55T-2956 owned by respondent no 2 and being driven by respondent No1. As a result of the accident the deceased and the pillion rider fell on the road and sustained injuries.

The deceased was removed to STC Hospital where he died during the course of treatment.”

4. To render the impugned Awards, the Motor Accident Claims Tribunal (*hereinafter referred to as ‘the Tribunal’*) has relied upon evidence of Injured-Rahul and parents of deceased and other evidence on record. The Tribunal has computed the notional income of deceased, a minor, at ₹15,000/- *per annum* and has deducted 1/3rd towards his ‘*personal expenses*’ and has applied multiplier of 18 to assess the ‘*loss of estate/dependency*’ at ₹5,10,636/- and has granted the same amount under the ‘*non-pecuniary heads*’. However, after deducting 50% on account of contributory negligence, the actual compensation granted by the Tribunal

to legal heirs of deceased-*Prateek Kumar*, is ₹5,10,636/-.

5. In case of Injured-*Rahul*, the Tribunal has assessed the functional disability at 100% although the permanent disability suffered by him in relation to both the lower limbs is 64%. Since Injured-*Rahul* was minor on the day of the accident, therefore, his notional income was taken to be ₹15,000/- *per annum* and after deducting 1/3rd towards his '*personal expenses*', '*loss of earning capacity*' has been determined at ₹5,10,636/- . Although Injured-*Rahul* was a pillion rider, yet 50% deduction on account of contributory negligence has been made and the compensation of ₹2,55,318/- has been granted to him. The breakup of compensation granted to Injured-*Rahul* by the Tribunal under the '*non-pecuniary heads*' is as under:-

1.) <i>Loss of amenities, loss of expectation of life & marriage prospects due to permanent disability</i>	:	₹1,00,000/-
2.) <i>Pain & Suffering</i>	:	₹1,00,000/-
3.) <i>Medicines & Medical Treatment</i>	:	₹1,87,156/-
4.) <i>Conveyance Charges</i>	:	₹20,000/-
5.) <i>Special diet</i>	:	₹20,000/-
6.) <i>Attendant charges</i>	:	₹30,000/-
Total	:	<u>₹4,57,156/-</u>

6. However, after deducting 50% on account of contributory negligence, the compensation actually granted by the Tribunal to Injured-*Rahul* is ₹4,83,896/-.

7. The challenge to impugned Award by learned counsel for Claimants/Injured is on the ground that deduction of 50% on account of

contributory negligence in case of Injured-*Rahul* is not justified as he was a pillion rider. It is submitted that Injured-*Rahul* was a student and was also working. It is pointed out that even if proof of his income is not there, still his '*loss of earning capacity*' ought to have been determined on minimum wages payable to a matriculate. It is further submitted that quantum of compensation granted to Injured-*Rahul* under the '*non-pecuniary heads*' is inadequate and it needs to be substantially enhanced.

8. In case of deceased, it is submitted by learned counsel for Claimants that this accident was witnessed by Injured-*Rahul* and as per evidence of this witness, there was no contributory negligence on the part of deceased and so, the Tribunal has erred in deducting 50% of the awarded compensation on account of contributory negligence of deceased. Reliance is placed by Claimants' counsel upon Supreme Court's decision in *Sudhir Kumar Rana vs. Surinder Singh & Ors.* 2008 ACJ 1834 to submit that no contributory negligence is attributable to a minor for want of driving licence as the negligence has to be determined on the facts of each case. It is submitted by Claimants' counsel that the Tribunal has erred in relying upon decision in *Chetan Malhotra & Ors. vs. Lala Ram & Ors.* 2016 VIII AD (DELHI) 415 as it was a case of a student whereas the case in hand, is of a Mechanic and so, minimum wages of a skilled worker ought to have been applied and the applicable multiplier was of 18. So, it is submitted by Claimants' counsel that compensation awarded by the Tribunal to legal heirs of deceased-*Prateek Kumar* deserves to be appropriately enhanced.

9. On the contrary, learned counsel for *IFFCO TOKIO General Insurance Company Limited* (hereinafter referred to as '*Insurer*')

supports the impugned Awards and submits that the Tribunal has rightly assessed the compensation and no case for enhancement of compensation is made out. In support of his submissions, Insurer's counsel has relied upon Supreme Court's decision in *R.K. Malik & Anr. vs. Kiran Pal & Ors.* (2009) 14 SCC 1.

10. Upon hearing and on perusal of impugned Awards, evidence on record and the decisions cited, I find that the Tribunal has erred in relying upon decision in *Chetan Malhotra (supra)* as the said case was of school going children, whereas in the instant case, deceased and Injured were working. Since their income is not proved on record, therefore, it has to be assessed on minimum wages payable to a matriculate as both of them were matriculates. Reliance placed by Insurer's counsel upon Supreme Court's decision in *R.K. Malik (Supra)* is of no avail as the said decision pertained to school going children. Even if it is taken that deceased and Injured were engaged in Distance Learning and were working also, still their income cannot be assessed on notional basis. In the considered opinion of this Court, the income of deceased and Injured has to be assessed on minimum wages payable to a matriculate. The minimum wages payable to a matriculate at the relevant time was ₹9802/- per month. Since deceased was aged 17 years and 11 months, therefore, the applicable multiplier is of 18. In view of Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680, addition of 40% has to be made towards '*future prospects*', whereas addition of ₹30,000/- is made under the '*non-pecuniary heads*'. In view thereof, compensation payable to legal heirs of deceased-*Prateek Kumar* is re-assessed as under: -

₹9802/-p.m. X 12 X 18 X 50/100 X 140/100 + ₹30,000/- = ₹15,12,062/-

11. As far as deduction of 50% on account of contributory negligence by the Tribunal is concerned, I find that evidence of eye-witness-*Rahul (PW-1)*, who was also injured in this accident, is unambiguous regarding the negligence of insured vehicle in causing the accident in question. There is no worthwhile cross-examination of this witness (*PW-1*) on the aspect of contributory negligence. Otherwise also, driver of insured vehicle has not come forward to set up a version contrary to the one given by the Injured. Therefore, the Tribunal was not justified in deducting 50% on account of contributory negligence. Merely because the deceased was not possessing a driving licence, would not justify a finding of contributory negligence. It is so said in view of Supreme Court's decision in *Sudhir Kumar Rana (supra)*. In view of above, it is held that negligence in causing the accident in question was of driver of insured vehicle. Hence, no deduction on this account is called for.

12. The Tribunal has displayed utter non-application of mind while deducting 50% of compensation on account of contributory negligence on part of Injured as the Injured was a pillion rider. In any case, no compensation is required to be deducted on account of contributory negligence, as this Court has already concluded in preceding paragraph that negligence in causing the accident in question was of the driver of insured vehicle.

13. Insofar as compensation granted to Injured-*Rahul* under the 'non-pecuniary heads' is concerned, I find it to be just and fair and as such, it is maintained. However, I find that 'loss of earning capacity' has to be assessed on the basis of minimum wages payable to a matriculate. It is so

said because Injured-*Rahul* in his evidence has categorically asserted that he was working as a Field Survey Executive and was earning ₹12,000/- to ₹15,000/- per month. Nothing has been brought out in the cross-examination of Injured-*Rahul* (PW-1) to indicate that he is a student and so, his '*loss of earning capacity*' has to be assessed at minimum wages payable to a matriculate. Reliance placed by Insurer's counsel upon Supreme Court's decision in *R.K. Malik (supra)* is misplaced as the said decision relates to a case of school going children, whereas the instant case pertains to an Executive. The Tribunal has also erred in assessing the functional disability at 100%, as after going through the evidence of Injured-*Rahul*, I find that there is no basis to assess the functional disability at 100%. It ought to be taken at 60% and it is so taken.

14. In light of the aforesaid, the compensation payable to Injured-*Rahul* is reassessed as under:-

1.	<i>Loss of Earning Capacity</i>	₹14,82,062/-
2.	<i>Medical Expenses</i>	₹1,87,156/-
3.	<i>Conveyance Charges</i>	₹20,000/-
4.	<i>Special Diet</i>	₹20,000/-
5.	<i>Attendant Charges</i>	₹30,000/-
6.	<i>Loss of amenities of life, etc.</i>	₹1,00,000/-
7.	<i>Pain and suffering</i>	₹1,00,000/-
Total		₹19,39,218/-

15. Consequentially, the compensation payable to legal heirs of deceased-*Prateek Kumar* is enhanced from ₹5,10,636/- to ₹15,12,062/- and the compensation payable to Injured-*Rahul* is enhanced from ₹4,83,896/- to ₹19,39,218/-. The modified compensation shall carry interest @ 9% *per annum*. The enhanced compensation be deposited by

Insurer within six weeks from today and thereafter, it be disbursed to Claimants/Injured in the manner as indicated in the impugned Awards.

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

(SUNIL GAUR)
JUDGE

SEPTEMBER 04, 2018

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