

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

Date of Decision: August 30, 2018

+ **MAC.APP. 1103/2017**

FUTURE GENERALI INDIA INSURANCE CO. LTD.

.....Appellant

Through: Mr. Amit Kumar Maihan,
Advocate

Versus

MANIK SHEIKH & ORS.

..... Respondents

Through: Mr. Anshuman Bal, Advocate

+ **MAC.APP. 5/2018**

FUTURE GENERALI INDIA INSURANCE CO. LTD.

.....Appellant

Through: Mr. Amit Kumar Maihan,
Advocate

Versus

MONIKA SHEIKH & ANR.

. Respondents

Through: Mr. Anshuman Bal, Advocate

+ **MAC.APP. 6/2018**

FUTURE GENERALI INDIA INSURANCE CO. LTD.

.....Appellant

Through: Mr. Amit Kumar Maihan,
Advocate

Versus

MANIK SHEIKH & ANR.

..... Respondents

Through: Mr. Anshuman Bal, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned first appeal arise out of impugned Award of 7th September, 2017 vide which Motor Accident Claims Tribunal (*henceforth referred to as the "Tribunal"*) has awarded compensation of ₹12,04,720/- with interest @ 9% p.a. to Claimants on account of death of a Labourer- *Sheikh Mansoor Ali*, aged 46 years, in a vehicular accident which took place on 30th January, 2016.
2. In this unfortunate accident in question, *Monika & Manik* were also injured and the Tribunal vide common Award of 7th September, 2017, has granted compensation of ₹10,000/- each with interest @ 9% p.a. to them, which is also under challenge in the above captioned second and third appeal.
3. The factual background of this case, as noticed in the impugned Award, is as under:-

"Brief facts of the case is that on 30.01.2016 at about 02.30 PM, deceased Sheikh Mansoor Ali alongwith his son Manik Sheik and minor daughter Monika Sheikh were going from their village to Kolkata in ambulance bearing registration No.UP-23T-3468 with the dead body of Shabnam Sheikh who was mother of Manik Sheikh and Monika Sheikh. Above-said ambulance was being driven by its driver in a rash and negligent manner. When the ambulance reached Noida Agra Expressway (73 kilometer mile stone), driver lost the balance of ambulance due to high speed and hit against pavement resulting in injuries to Manik Sheikh and Monika Sheikh and fatal injuries to Sheikh Mansoor Ali."

4. To render the impugned Award, the Tribunal has relied upon evidence of Claimants/ legal heirs of deceased and other evidence on record. On the strength of evidence recorded, impugned Award has been rendered.

5. The breakup of compensation awarded by the Tribunal to legal heirs of deceased –*Sheikh Masnsoor Ali* is as under:-

1	<i>Loss of dependency</i>	<i>₹9,54,720/-</i>
2	<i>Funeral Expenses</i>	<i>₹50,000/-</i>
3	<i>Loss of Love & Affection</i>	<i>₹1,50,000/-</i>
4	<i>Loss of estate</i>	<i>₹50,000/-</i>
<i>Total</i>		<i>₹12,04,720/-</i>

6. Since these three appeals 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.

7. The challenge to the impugned Award by learned counsel for appellant-Insurer is not on quantum of compensation awarded but is on the ground that the actual driver, who was driving the insured vehicle, has been shielded and in his place, *Rajinder Kumar*, who is the owner of the insured vehicle, has come forward to claim that he was driving the insured vehicle. Reliance is placed upon evidence of *Gagan Sharma* (R2W1), who had shifted the injured to the hospital, to submit that as per this witness, the insured vehicle was not driven by said *Rajinder Kumar*. Reliance is also placed upon evidence of *Jagdish Narayan Singh* (R2W2), who has pulled out the driver from the insured vehicle after cutting it. It is

submitted that it is impossible that the driver of the insured vehicle would not have sustained any injury and *Rajinder Kumar* had not sustained any injury. It is submitted that MLC of *Rajinder Kumar* is not on record. Attention of this Court is drawn by counsel for appellant-Insurer to evidence of *Amit Yadav (R2W4)*, an Officer of appellant-Insurance Company, to submit that despite service of Notice u/O 12, Rule 8 CPC, owner of the insured vehicle had not responded to it. It is submitted by counsel for appellant-Insurer that criminal proceedings are still pending. So, it is submitted on behalf of appellant-Insurer that in the instant case, recovery rights ought to have been granted by the Tribunal to appellant-Insurer to recover the awarded compensation from the owner and driver of insured vehicle.

8. On the contrary, counsel for respondents-Claimants submits that *Rajinder Kumar*, owner of insured vehicle, has been already charge-sheeted in the criminal case and so, the liability to pay the awarded compensation is of the Insurer and no case is made out to grant recovery rights to appellant-Insurer to recover the awarded compensation from owner and driver of the insured vehicle.

9. Upon hearing and on perusal of impugned Award, I find that from the evidence of *Amit Yadav (R2W4)*, it cannot be inferred that *Rajinder Kumar* has substituted himself in place of driver of the insured vehicle. Relevantly, witness-*Gagan Sharma (R2W1)* in his cross-examination has admitted that he had not witnessed the accident in question and he has not deposed that *Rajinder Kumar* was not driving insured vehicle when this accident took place. Possibility cannot be ruled out that in an accident, the

driver of a vehicle escapes without injuries. On the basis of evidence relied upon by appellant's counsel, it cannot be concluded that there is any substitution of driver of insured vehicle. Pendency of criminal proceedings cannot be a bar for the Tribunal to arrive at a finding on the negligence aspect. In the considered opinion of this Court, on the plea of substitution of driver of the insured vehicle, appellant cannot escape the liability to pay the awarded compensation, which appears to be just and reasonable. Resultantly, finding no substance in these appeals, they are dismissed.

10. The above captioned three appeals are accordingly disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 30, 2018
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