

Sudha vs Shah Alam @ Sham Alam on 22 October, 2018

IN THE COURT OF SH. DEVENDER KUMAR, PRESIDING
OFFICER-MOTOR ACCIDENT CLAIMS TRIBUNAL, SHAHDARA
DISTRICT, KKD, DELHI

MAC No. 2112/16

1. Sudha
W/o Sh. Dharam Singh

2. Dharam Singh
S/o Sh. Kode Singh

3. Nitin
S/o Sh. Dharam Singh

All R/o H.No. 118, Kalyan Puri,
Delhi -110091

....Petitioners

Versus

1. Shah Alam @ Sham Alam
S/o Sh. Shaheed Khan
R/o D-387, Gali No. 6,
West Vinod Nagar, Delhi-110092

Driver

2. Prince Tyagi
S/o Sh. Kripal Tyagi
R/o B-92, Staff Quarter Police,
Geeta Colony, Delhi - 110031

Owner

3. ICICI Lombard Insurance Company Ltd.
C/o Zenith House, Keshav Rao Khade Marg,
Mahalaxmi, Mumbai

Insurance Company

...Respondents

MAC No.2112/16
MAC No.2131/16

Sudha & Ors. Vs. Shah Alam & Ors.
Praveen Kumar Vs. Shah Alam & Ors.
AND

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MAC No. 2131/16

Praveen Kumar
S/o Sh. Kailash Kumar

R/o H.No. X-200/6,
Gali No. 11, Braham Puri,
Delhi -110053

....Petitioner

Versus

1. Shah Alam @ Sham Alam
S/o Sh. Shaheed Khan
R/o D-387, Gali No. 6,
West Vinod Nagar, Delhi-110092

Driver

2. Prince Tyagi
S/o Sh. Kripal Tyagi
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Insurance Company

...Respondents

Date of Institution of MAC No. 2112/16	:	23.07.2016
Date of Institution of MAC No. 2131/16	:	05.08.2016
Date of Institution of both DARs	:	09.06.2016
Date of Arguments	:	27.07.2018
Date of Judgment	:	22.10.2018

MAC No.2112/16

Sudha & Ors. Vs. Shah Alam & Ors.

MAC No.2131/16

Praveen Kumar Vs. Shah Alam & Ors.

2/28

JUDGMENT:

Vide this common judgment I shall dispose off two DARs filed by SHO, PS Madhu Vihar and two separate petitions filed by petitioners against the respondents. The brief facts of the case are as follows:

1. Facts: Petitioners in both cases have alleged that on 16.04.2016 at about 1.45 pm, injured Praveen Kumar and his friend as well as deceased Sanjeev Kumar were going by motorcycle bearing No. DL-14SB-2459 and reached at Road No. 56, Reserve Flyover, Madhu Vihar, Delhi, when suddenly an offending vehicle bearing No. DL-10CD-2491 being driven by its driver in rash and negligent manner hit against their motorcycle and both occupants fell down and sustained injuries. It is further stated that both injured were removed to GTB Hospital where their MLCs were prepared, but, thereafter injured Praveen Kumar was shifted to Max Hospital. However, Sanjeev Kumar died during treatment and post mortem was conducted on

his dead body. It is further stated that police lodged FIR No. 244/16 u/s 279/338/304A IPC with PS Madhu Vihar, Delhi against the driver of the offending vehicle. The offending vehicle was seized and driver was arrested and charge-sheeted. After investigation, police have filed both DARs which were followed by two separate petitions filed by petitioners.

2. Written Statement: Respondent No. 1 & 2 have filed their joint WS thereby stating that they have been falsely implicated to this case otherwise this accident took place by the negligence of the deceased.

MAC No.2112/16 Sudha & Ors. Vs. Shah Alam & Ors. MAC No.2131/16 Praveen Kumar Vs. Shah Alam & Ors. 3/28 It is further stated that the offending vehicle was insured with the insurance company which is liable to pay this compensation, if any, otherwise this case is liable to be dismissed. Respondents have denied all the allegations leveled of the petitions and have prayed that both cases are liable to be dismissed.

2.2. Respondent No. 3 i.e. Insurance Company has filed Legal Offer in both cases, but the same were not accepted by the petitioners and were treated as WS. As such, insurance company has no defense in any of the cases.

3. ISSUES - From the pleading of the parties following issues are framed as under:

1. Whether respondent no. 1 was driving vehicle bearing no DL-10 CD 2491 on 16.04.2015 at 1.45 am at flyover going from Seemapuri towards Ghazipur, Road No. 56, Delhi in a high speed and in rash and negligent manner and hit against motorcycle bearing No. DL-14SB-2459 being driven by Praveen with Sanjeev Kumar as pillion rider as a result both of them fell down and Sanjeev Kumar sustained fatal injuries? OPP

2. Whether the petitioners are entitled for any compensation, if so and for what amount? OPP

3. Relief.

MAC No.2112/16 Sudha & Ors. Vs. Shah Alam & Ors. MAC No.2131/16 Praveen Kumar Vs. Shah Alam & Ors. 4/28

1. Whether respondent no. 1 was driving vehicle bearing no DL-10 CD 2491 on 16.04.2015 at 1.45 am at flyover going from Seemapuri towards Ghazipur, Road No. 56, Delhi in a high speed and in rash and negligent manner and hit against motorcycle bearing No. DL-14SB-2459 being driven by Praveen with Sanjeev Kumar as pillion rider as a result both of them fell down and Praveen sustained injuries? OPP

2. Whether the petitioner is entitled for any compensation, if so and for what amount? OPP

3. Relief.

4. Two petitions were filed against the same accident and both were clubbed together vide order dated 06.12.2016 and petition MAC No. 2112/16 was treated as main petition to lead evidence. Police also filed a DAR two separate DARs and DAR No. 2030/16 was clubbed with MAC No.2112/16 and DAR No.2031/16 was clubbed with MAC No. 2131/16. MAC No.2112/16 is the main petition in all cases in which evidence has been led. All these petitions are being decided together being arising out of same accident and filed with similar set of facts. It is also necessary to avoid any conflict of legal opinion of this court.

5. PETITIONER'S EVIDENCE: To prove the case, Petitioners have examined PW1 Sh. Praveen Kumar who is injured as well as eye witness of this accident. PW1 has repeated his allegations levelled in the DARs / petitions about the mode and manner of this accident. He MAC No.2112/16 Sudha & Ors. Vs. Shah Alam & Ors. MAC No.2131/16 Praveen Kumar Vs. Shah Alam & Ors. 5/28 has deposed that police lodged this FIR after the accident on the basis of his statement. It is further deposed that he sustained injuries during this accident and treated in GTB Hospital as well as Max Hospital and has spent Rs. 1,00,000/- on his treatment. It is further deposed that he was doing job with M/s. Manpower Group Services Pvt. Ltd. and was earning Rs. 25,000/- pm and has suffered loss of income on account of his bed confinement during the treatment period for more than one year. It is further deposed that he has suffered permanent disability towards his right leg. He has relied upon the documents i.e. Ex.PW1/A to Ex.PW1/D and Mark X. 5.1. During cross examination, he has deposed that he has already received reimbursement of his medical bills through his father who is employed with Archaeological Survey of India, but some of medical bills after his discharge have not reimbursed; however, he has not placed on record those bills. It is further deposed that he was working with Royal Bank of Scotland and was entitled for medical claim benefits but did not seek any reimbursement. It is further deposed that he was on leaves during bed ridden period, but he has not filed his leaves record, however he has deposed voluntarily that he did not receive salary for one month. It is further admitted that deceased Sanjeev was with him at the time of this accident and was travelling by his bike being driven by him. It is further deposed that they were following their friends Dheeraj and Trilok on a separate bike at the time of accident when the offending vehicle hit against his motorcycle from behind. He was not aware as to who informed the police, but he was removed to GTB Hospital by his friends. It is further admitted that he MAC No.2112/16 Sudha & Ors. Vs. Shah Alam & Ors. MAC No.2131/16 Praveen Kumar Vs. Shah Alam & Ors. 6/28 consumed beer on the day of accident, but he was not aware as to whether his friend / deceased had consumed liquor or not. It is further deposed that driver of the offending vehicle left the spot after checking them that they sustained injuries, but the number plate of the offending vehicle had fallen at the spot by which they he noted down the number of the offending vehicle.

5.2. PW2 Dharmender Singh Triyal from M/s. EXL Service.com (I) Pvt. Ltd. has proved the attendance sheet of deceased Sanjeev for period from 01.11.2015 to 16.4.2016 and also salary slip for the period from November, 2015 to March, 2016 as Ex.PW2/A. The employment agreement of deceased with employer is Ex.PW2/B. He has produced his authority letter as Ex.PW2/C. 5.2.1. During cross examination, he has admitted that he has not brought the employment agreement of the deceased and document Ex.PW2/B is just photocopy which has not bore signature of employee.

It is further admitted that he has produced the attendance sheet of deceased Sanjeev w.e.f. 1.11.15, though his date of joining was w.e.f. 3.3.2015, against a basic salary of Rs. 4375/- pm and remaining amount was towards allowances for Rs. 19968 for month of March, 2016.

5.3. PW3 Bijender Singh Gusai of M/s. Manpower Group Services Pvt Ltd. has produced his authority letter Ex.PW3/A and has proved the appointment letter and salary slip of injured Praveen which are Ex.PW3/B to Ex.PW3/D. It is admitted that injured was not permanent MAC No.2112/16 Sudha & Ors. Vs. Shah Alam & Ors. MAC No.2131/16 Praveen Kumar Vs. Shah Alam & Ors. 7/28 employee and was on contract job for fixed term to be terminated w.e.f. 31.01.2019. He has not produced leave record of injured and could not say as to whether injured was on leaves or not.

5.4. PW4 Ms. Sudha is the mother of deceased Sanjeev Kumar and is witness of dependency. She has deposed about the mode and manner of accident, but she was not eye witness to this accident. She has deposed that her deceased son was working with M/s. EXL Service.Com (I) Pvt. Ltd. and was earning Rs. 2,10,000/- per annum. It is further deposed that the deceased was bachelor and her husband is mentally disburshed, due to he was financially dependent upon deceased. She has relied upon documents Ex.PW4/A to Ex.PW4/C. 5.4.1. During cross examination, she has deposed that her husband is unemployed being having neurological problem and his treatment paper is Mark A. It is further deposed that another son namely Nitin is unemployed, but he is major. It is further deposed that they are residing in the house belonged to her mother in law.

6. Respondent's Evidence: Respondents have not examined any evidence and RE was closed on 01.06.2018.

7. I have heard the arguments and perused the record. First issue in both petitions is pertaining to rash and negligent driving of the offending vehicle and my findings on Issue No. 1 in both petitions are as under:

MAC No.2112/16 Sudha & Ors. Vs. Shah Alam & Ors.

MAC No.2131/16 Praveen Kumar Vs. Shah Alam & Ors. 8/28 Issue No. 1 in both Cases: Admittedly, these petitions have been filed u/s 166 of M.V. Act and onus to prove rash and negligent driving of the offending vehicle by its driver was on the petitioners who have brought the law into motion; however, this fact is not to be proved beyond doubt or in the similar manner as a fact is to be proved in a civil case. Rather it has to be proved on the touchstone of preponderance of probability and holistic view is to be taken while dealing with the Claim Petition based upon negligence. In fact, a Claims Tribunal is enjoined to hold an inquiry to determine compensation which must appear to it to be just. Strict rules of evidence are not applicable in an inquiry conducted by the Claims Tribunal as observed in New India Assurance Co. Ltd. Vs. Sakshi Bhutani & Ors., MAC APP. No. 550/2011 decided on 02.07.2012 and State of Mysore Vs. S.S. Makapur, 1993 (2) SCR

943. It is further held in N.K.V. Bros. (P) Ltd. v. M. Marumai Ammal, 1980 ACJ 435 (SC) that tribunal should not succumb to niceties, technicalities and mystic maybes. The court is bound to take broad view of the whole matter. As such, the case of the petitioners has to be decided in view of the above said legal proposition.

8. In fact, petitioners have examined PW1 Praveen Kumar who is injured as well as eye witness of this accident to prove the rash and negligent driving of the offending vehicle. PW1 has proved that on 16/04/2016 at about 1:45 am, he along with his deceased cousin / friend namely Sanjeev was going from the side of Seema Puri towards Ghazipur, Delhi by his motorcycle No. DL-14SB-2459 and crossed Anand Vihar Flyover, when suddenly one car bearing No. DL-10CD- 2491 being driven by Respondent No.1 in rash and negligent manner MAC No.2112/16 Sudha & Ors. Vs. Shah Alam & Ors. MAC No.2131/16 Praveen Kumar Vs. Shah Alam & Ors. 9/28 caused this accident. It is further proved that the other associates of the injured / deceased removed him as well as deceased to GTB Hospital where they were treated, but deceased was declared dead, whereas PW1 was also treated in Max Hospital also. This FIR was lodged at the instance of PW1 Praveen in which he disclosed the same mode and manner of this accident as deposed before this court and there is no reason to disbelieve his testimony as an eye witness. PW1 was also injured of this accident and his MLC has also corroborated the fact that he sustained injuries during this accident. MLC of deceased Sanjeev is also on record and both the MLCs have duly proved that they were removed to hospital by Trilok after this accident and he was their associate and was with them as also disclosed in FIR itself. The medical papers of injured as well as deceased have corroborated their injuries which were arising out of this accident. Similarly, the postmortem of the deceased Sanjeev has also proved that his cause of death was result of this accident. It is further proved that Police lodged a case FIR No. 244/16 against the Respondent No. 1 who caused this accident by his rash and negligent driving of the offending vehicle and it is prime facie has proved his involvement to this case. The testimony of PW1 is also similar to the criminal record against the respondent No.1. The offending vehicle was subjected to mechanical inspection and it has also corroborated the corresponding damages to both vehicles which was possible during this accident. The site plan of the spot of accident has proved that the offending vehicle hit the vehicle of the deceased from behind and it has also proved the negligence of the respondent No.1 that he was not maintaining sufficient distance between the vehicles. A notice u/s 133 of M.V. Act MAC No.2112/16 Sudha & Ors. Vs. Shah Alam & Ors. MAC No.2131/16 Praveen Kumar Vs. Shah Alam & Ors. 10/28 was also served upon the owner of the vehicle who disclosed that respondent No.1 was driving the offending vehicle at the time of this accident. Respondent No.1 was also arrested in this case and charge sheeted. The original documents were also seized and duly verified by the IO in both DARs. The driver of the offending vehicle left the spot after this accident but number plate of the offending vehicle dropped at the spot by which the number of the offending vehicle was traced out and this fact is also mentioned in the FIR itself and has proved the involvement of the offending vehicle to this case. PW4 has also corroborated the version of PW1 about the mode and manner of this accident. As such, the testimonies of PW1 and PW4 have duly proved that this accident was caused by Respondent No. 1 by his rash and negligent driving of the offending vehicle. The owner of the vehicle is also vicariously liable to pay this compensation. Petitioners in both cases have discharged the onus to prove this issue No. 1, accordingly this issue is decided in favour of petitioners and against the respondents.

9. ISSUE No. 2 in MAC No. 2112 /16 - The onus to prove this Issue No. 2 was fixed upon the Petitioners. Since the Petitioners have proved that Respondent No. 1 caused this accident by his rash and negligent driving, accordingly petitioners are entitled for compensation. However, it is to be decided as to what compensation is to be paid and by whom.

9.1. Age of deceased: To determine the compensation in a fatal case, Petitioners are required to prove the age and income of the MAC No.2112/16 Sudha & Ors. Vs. Shah Alam & Ors. MAC No.2131/16 Praveen Kumar Vs. Shah Alam & Ors. 11/28 deceased as well as number of dependents to make necessary deductions towards the personal expenses of the deceased. The age of deceased is necessary to apply the multiplier. Petitioners have disclosed the age of the deceased as 26 years. As per aadhar card of deceased, the year of birth of deceased was 1998, whereas this accident took place on 16.4.2016. As such, the age of deceased comes to 28 years at the time of accident which is taken accordingly.

9.2. Multiplier applicable in this case to decide Compensation - After ascertaining the age of the deceased, an appropriate multiplier has to be determined. The judgment of case titled Sarla Verma v. DTC, (2009) 6 SCC 121 is relevant to consider this multiplier. Para 21 of the judgment has laid down the multiplier as per age as under:

MULTIPLIER	AGE GROUP OF DECEASED
M-18	Age groups between 15 to 20 and 21 to 25 years)
M-17	Age groups between 26 to 30 years,
M-16	Age groups between 31 to 35 years,
M-15	Age groups between 36 to 40 years,
M-14	Age groups between 41 to 45 years,
M-13	Age groups between 46 to 50 years,
M-11	Age groups between 51 to 55 years,
M-9	Age groups between 56 to 60 years,
M-7	Age groups between 61 to 65 years
M-5	Age groups between 66 to 70 years.

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In view of the above said judgment, a multiplier of 17 has to be applied against 28 years of age of the deceased to determine this compensation.

9.3. Determination of Income of deceased / Injured: After deciding the age and multiplier, the income of the deceased has to be determined. The deceased was a working with M/s. EXL Service.com (I) Pvt. Ltd. and stated to be drawing a salary of Rs. 2,10,000/- per annum. Letter of intent and employment agreement has proved this fact. As per this agreement, the employment of the deceased was contractual in nature till attainment of majority. He was also subjected to confirmation after a period of six months w.e.f 02.03.2015. This accident took place on 16.4.2016 and by this time he was already confirmed against this employment. However, he cannot be considered in permanent job as it has clause of termination with notice of 45 days. The salary components of the deceased, as per his salary certificate, were basic salary of Rs. 52,500 besides HRA of Rs. 78,756/- and shift allowance of Rs. 33,080/-. However, some other allowances like leave travel, domiciliary medical, and Tiffin allowance of Rs. 4,373/-, Rs. 15,000/- and Rs. 15,600/- respectively were also payable and was part of package, but such allowances were of personal nature and could not be treated as part of salary. As such, a salary of deceased was Rs. 1,79,330/-per annum after deduction of such allowances which were of personal nature (Basic Pay + HRA + Domiciliary Medical + Shift Allowance). Even salary of deceased Sanjeev including allowances was not covered under taxable limits under Income Tax Act being Rs.2,10,000/- per annum, accordingly no deduction towards tax are to MAC No.2112/16 Sudha & Ors. Vs. Shah Alam & Ors. MAC No.2131/16 Praveen Kumar Vs. Shah Alam & Ors. 13/28 be made. As such, the annual income of deceased is taken as Rs. 1,79,330/- per annum as per his salary agreement.

9.4. Necessary deductions out of earnings of the deceased towards personal expenses: After choosing the age, multiplier and income of the deceased, necessary deductions have to be made out of the income of the deceased towards his personal expenses. The Hon'ble Supreme Court of India in case titled Reshma Kumari & Ors. v. Madan Mohan & Anr., (2013) 9 SCC 65, in Para 30, has laid down the necessary deductions towards personal living and expenses of deceased as under:

Number of dependents Deductions out of earning of the deceased.

Half / $\frac{1}{2}$	Where dependent is 1
1/3rd	Where the number of dependent family members is 2 to 3
1/4th	Where the number of dependent family members is 4 to 6,
1/5th	Where the number of dependent family members exceeds 6 (six).

9.5. In view of the above said judgment, Petitioner No. 1 Smt. Sudha is the mother of deceased and Petitioner No. 2 and 3 are father and major brother of the deceased. Though petitioner no. 1 has deposed that the father of deceased and her husband is not mentally fit, yet no document to this effect has proved on record except Mark A which is not reliable document to prove the medical illness of the father of deceased to consider him as dependent. Even petitioner no. 3 is major brother of deceased and was not dependent upon him. As such, there MAC No.2112/16 Sudha & Ors. Vs. Shah

Alam & Ors.

MAC No.2131/16 Praveen Kumar Vs. Shah Alam & Ors. 14/28 was only one dependent of deceased and 50% of award amount has to be deducted towards personal expenses i.e. Rs. 88,165/-, out of, Rs. 1,79,330 /- per annum.

9.6. Determination of future earnings: Besides it, a future income of the deceased is also to be considered in view of the latest judgment of the Hon'ble Apex Court titled National Insurance Company Limited vs. Pranay Sethi & Ors, SLP (Civil) No. 25590 of 2014 decided on 31.10.2017 in which it is observed as under:-

(iii) While determining the income, an addition of 50% of actual salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

(iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.

(viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs.

15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

In fact, in view of the above said judgment, 40% amount is to be considered towards future income of the deceased who was aged about 28 years as he was contractual employee with M/s. EXL Service.com (I) Pvt. Ltd.

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10. Calculation of Loss of Dependency / Estate of Petitioners: I have already observed that the deceased was earning Rs. 88,165/- p.a. after 1/2 deductions. Thereafter, this annual income has to be multiplied by multiplier of 17 as per Sarla Verma v. DTC (supra). Rs. 88,165 x 17 = Rs. 14,98,805/-. The 40% future income of the deceased has to be added in terms of National Insurance Co. v. Pranay Shetty (Supra) i.e. Rs. 5,99,522/-. As such, loss of income of dependency / estate comes to Rs. 14,98,805 + Rs. 5,99,522 = Rs. 20,99,327/-.

10.1. Loss of consortium- The claimants are parents and brother of deceased. Petitioner No. 1 is mother of the deceased and shall not be entitled for compensation under this head of loss of consortium.

10.2. Loss of Estate- Petitioners shall not be entitled for any compensation under this head as the claim of the claimants has been decided under this head of loss of estate.

10.3. Funeral Charges- Petitioners are also entitled for Rs 15,000/- towards funeral expenses in terms of Pranay Shetty case (supra).

10.4. Medical Expenses: It is not disputed that petitioners are also entitled for medical treatment expenses of the deceased prior to his death. However, in this case, Petitioners have not proved any medical bill due to they are not entitled for any reimbursement of bills.

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11. As such, petitioners are entitled for the compensation as under:

1. Loss of dependency / Rs. 20,99,327/-

Estate :

2. Loss of Estate: NIL

3. Funeral Charges: Rs. 15,000/-

4. Loss of Consortium : NIL Total Rs. 21,14,327 (rounded off Rs.21,15,000/-

12. Liability: Petitioners have proved that the Respondents No. 1 and 2 are liable to pay this compensation being driver and owner of the offending vehicle. Respondent No. 3 insured the offending vehicle and is liable to satisfy this award. However, Ld. Counsel for the Insurance Company has pleaded that the deceased was responsible to cause this accident as injured / driver of the vehicle of deceased was under

the influence of liquor at the time of this accident due to 50% of the award amount of deceased and injured has to be reduced towards contributory negligence, but this argument has not force as no quantity of liquor has been mentioned in his MLC to determine this contributory negligence, accordingly it cannot be considered a contributory negligence. As such, respondent No. 3 is liable to pay this compensation in both cases.

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13. Keeping in view of the facts and circumstances, this petition MAC No. 2112/16 is allowed. Petitioners are entitled for compensation of Rs. 21,15,000/- from the Respondent No. 3 i.e. ICICI Lombard General Insurance Company Ltd. with interest @ 9% p.a. from the date of filing of the petition till its realization. The interim compensation, if any shall be adjusted against this award amount along with the waiver of interest, if any as directed by this court during the pendency of this case. Respondent No. 3 is directed to give notice regarding deposit of the said amount to the petitioners and their counsel. As such, Petitioners have also successfully discharged the onus to prove the issue No. 2 and are entitled for this claim amount as above. The following award is passed as under:

This petition is allowed. Respondent No. 3 i.e. Insurance Company is directed to pay a compensation of Rs. 21,15,000/- with interest @ 9% p.a. from the date of filing of this petition till its realization to the Petitioners and to deposit the award amount within one month from the date of this award. However, this award amount shall be subjected to adjustment of the interim award, if any and also the waiver of interest, if any as directed by this court during the pendency of this claim. Award amount be released to the claimants after deposit by Respondent No. 3 in terms of disbursement.

14. Apportionment of Award amount: The award amount has to be distributed amongst the claimants. Petitioner No. 1 Smt. Sudha is MAC No.2112/16 Sudha & Ors. Vs. Shah Alam & Ors. MAC No.2131/16 Praveen Kumar Vs. Shah Alam & Ors. 18/28 the mother of the deceased and shall be entitled for 60% i.e. Rs. 12,69,000/- of entire award amount with corresponding interest. The other Petitioners No.2 is the father of deceased and shall be entitled for 40% of award amount with corresponding interest. Petitioner no. 3 shall not be entitled for any share in the award amount being major and independent.

15. Disbursal of Award amount: Now the disbursement of award amount has to be considered. The procedure of disbursement of the award amount has been provided in Clause-29 of Modified Claims Tribunal Agreed Procedure formulated by the Hon'ble High Court of Delhi in Rajesh Tyagi v. Jaibir Singh, I (2005) ACC 838 (Del.) and Tazuddin Ansari & Ors. v. Satish Kumar & Ors, 2016 SCC OnLine Del 5380 and the disbursement of the award amount is as under.

15.1. Petitioner No. 1 Smt. Sudha Devi is the wife of the deceased and shall be entitled for an amount of Rs. 2,69,000/- out of Rs. 12,69,000/- with corresponding interest instantly to be credited in her saving bank account nearby to her residence. The interim amount, if any already paid shall be adjusted towards the amount payable instantly. Remaining amount of Rs.10,00,000/- shall be fixed into automatically renewable FDRs as under:

1. 6 Months Rs.50,000/-

2. 1 Year Rs.50,000/-

3. 1 1/2 Yrs. Rs.50,000/-

4. 2 Yrs. Rs.50,000/-

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5. 2 1/2 Yrs Rs.50,000/-

6. 3 Yrs Rs.50,000/-

7. 3 1/2 Year Rs.50,000/-

8. 4 Yrs. Rs.50,000/-

9. 4 1/2 Yrs. Rs.50,000/-

10. 5 Yrs Rs.50,000/-

11. 5 1/2 Yrs Rs.50,000/-

12. 6Year Rs.50,000/-

13. 6 1/2 Yrs. Rs.50,000/-

14. 7 Yrs. Rs.50,000/-

15. 7 1/2 Yrs. Rs.50,000/-

16. 8 Yrs. Rs.50,000/-

17. 8 1/2 Yrs. Rs.50,000/-

18. 9 Yrs. Rs.50,000/-

19. 9 1/2 Yrs. Rs.50,000/-

20. 10 Yrs. Rs.50,000/-

Total = Rs. 10,00,000/-

15.2. The share amount of Petitioners No.2 shall be entitled for an amount of Rs. 1,46,000/- out of Rs.8,46,000/- with corresponding interest instantly to be credited in her saving bank account nearby to her residence. The interim amount, if any already paid shall be adjusted towards the

amount payable instantly. Remaining amount of Rs.7,00,000/- shall be fixed into automatically renewable FDRs as under:

1. 6 Months Rs.50,000/-

2. 1 Year Rs.50,000/-

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3. 1 1/2 Yrs. Rs.50,000/-

4. 2 Yrs. Rs.50,000/-

5. 2 1/2 Yrs Rs.50,000/-

6. 3 Yrs Rs.50,000/-

7. 3 1/2 Year Rs.50,000/-

8. 4 Yrs. Rs.50,000/-

9. 4 1/2 Yrs. Rs.50,000/-

10. 5 Yrs Rs.50,000/-

11. 5 1/2 Yrs Rs.50,000/-

12. 6Year Rs.50,000/-

13. 6 1/2 Yrs. Rs.50,000/-

14. 7 Yrs. Rs.50,000/-

Total = Rs. 7,00,000/-

16. Issue No. 2 in MAC No. 2131/16 - The onus to prove this issue was fixed upon the petitioner. Since the petitioner / injured has proved the Issue No. 1, accordingly, it is to be determined as to for what compensation is to be awarded to the injured.

16.1. This case is pertaining to the injury sustained by the petitioner and scope of the compensation in injury cases has been discussed by the Hon'ble Supreme Court of India in case titled Mr. R.D. Hattangadi v/s M/S Pest Control (India) Pvt. Ltd., 1995 AIR 755 in the following words as under:

Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which is capable of being calculated in terms of money-, whereas non-pecuniary damages are those MAC No.2112/16 Sudha & Ors. Vs. Shah Alam & Ors.

MAC No.2131/16 Praveen Kumar Vs. Shah Alam & Ors. 21/28 which are incapable of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may, include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit upto the date of trial; (iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e. on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

In view of the above said law, the damages of the petitioner / injured have to be decided under the following heads as under:

17. Reimbursement of medical expenses: Petitioner has not proved any medical bills for reimbursement and all medical bills have already been reimbursed through his father. However, he has proved medical bills Ex.PW1/C for Rs. 1220/- which have not been reimbursed, due to he is entitled for reimbursement of such medical bills under this head.

18. Pain and Suffering: PW1 has proved that he sustained grievous injuries and also received treatment against his MLC and medical papers Ex.PW1/B during the period between on 17.04.2016 to 05.05.2016 from Max Hospital and thereafter followed up treatment upto 27.09.2016. However, he has not suffered any permanent disability. As such, a person who suffered such injuries is supposed to suffer pain and suffering, due to injured is entitled for compensation under this head.

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19. Conveyance & Special diet: Petitioner has not filed any bill of conveyance and special diet to prove that he spent any amount under these heads. However, he remained under treatment for about two months and roamed around regarding his treatment and spending on conveyance was definite. Similarly special diet to under treatment is usually suggested, due to he is entitled for compensation under these heads.

20. Attendant charges: Petitioner has not proved that he paid any amount to any attendant, but he remained under bed confinement and must be assisted by attendant or family members during his hospitalization and follow up treatment, due to he is entitled for compensation under this head for a

period of 2 months on average basis @ Rs. 5,000/- pm.

21. Lose of Income during treatment period: Injured has proved that he remained under treatment between on 17.04.2016 to 05.05.2016 from Max Hospital and thereafter followed up treatment upto 27.09.2016, however he has deposed during examination that he was on leaves only for one month, but no such record has been produced to this effect. As such, no loss of income of injured is proved on record. However, injured sustained grievous injuries and remained under treatment including his hospitalization. As such, injured shall be entitled for loss of income on account of this accident for a consolidated amount of Rs. 35,000/- under this head.

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22. Lose of income due to permanent disability: Petitioner has not suffered any permanent disability due to he is not entitled for any compensation under this head.

23. Damages for inconvenience, hardship, discomfort, frustration and mental stress in life: Petitioner / injured has not proved any disfigurement, loss of amenities and enjoyment on record. However, in case of grievous injuries, inconvenience was bound to happen and injured must have suffered discomfort and hardship by his injuries. Even he would have suffered mental stress and discomfort in life due to this accident and is entitled for compensation under these heads.

24. As such, petitioner / injured Praveen Kumar is entitled for the compensation as under:

1. Reimbursement of medical expenses: Rs. 1,220/-
2. Pain and Suffering: Rs. 35,000/-
3. Attendant charges for 2 months: Rs. 5,000 x 2 = Rs. 10,000/-
4. Lose of Income during treatment period: Rs. 35,000/-
5. Loss of earning capacity including future NIL damages due to this disability:
6. Conveyance & special diet: Rs.15,000/-
7. Compensation for mental and physical Rs. 15,000/-

shock :

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8. Loss of amenities in life: Rs.15,000/-

9. Damages for inconvenience, hardship, Rs.15,000/-

frustration and permanent disfigurement.

Total = Rs.1,41,220/-

(rounded off Rs.1,42,000/-

25. Keeping in view the facts and circumstances of the case, Petition MAC No. 2131/16 is allowed. Petitioner / injured is entitled for compensation of Rs. 1,42,000/- from the Respondent No3 with interest @ 9% p.a. from the date of filing of the petition till realization, subject to adjustment of waiver of interest or interim compensation, if any directed by this court during the pendency of this case. Respondent No. 3 is directed to give notice regarding deposit of the said amount to the petitioner and his counsel. The following award is passed as under:

This petition is allowed. Respondent No. 3 is directed to pay a compensation of Rs. 1,42,000/- with interest @ 9% p.a. from the date of filing of the petition till realization, subject to waiver of any interest, if any directed by the court during the pendency of the trial, to the petitioner and to deposit the award amount within one month from the date of this award. Award amount be released to the injured / claimant after deposit by the Respondent.

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26. Disbursal of Award amount in MAC No-2131/16: Now the disbursement of award amount has to be considered. Petitioner / injured shall be entitled for of 50% of award amount instantly and remaining 50% shall be fixed by the way of FDR for a period of 2 years with accumulative interest.

27. Common Conditions regarding FDRs:

27.1. The interest against the above said FDRs on the FDRs shall be calculated on quarterly basis and shall also be credited in the account of the claimant/s on quarterly basis.

27.2. FDRs amount shall be paid on maturity basis in the same accounts of the petitioners against which interest amount is being credited through ECS.

27.3. The Manager, UCO Bank or of any other bank as desired by the claimants shall open the saving bank account of the claimants or transfer to his /her / their existing accounts, if any, nearby to his/her/ their residence after taking relevant documents.

27.4. The withdrawal from the aforesaid bank account of the petitioners / claimants shall be after due verification by the bank and the bank shall issue photo identity card to the petitioners to facilitate the identity.

27.5. The original FDRs shall be retained by the bank in safe custody. However, statement containing FDR numbers, FDRs amount, MAC No.2112/16 Sudha & Ors. Vs. Shah Alam & Ors.

MAC No.2131/16 Praveen Kumar Vs. Shah Alam & Ors. 26/28 date of maturity and maturity amount shall be furnished to claimant.

27.6. No loan, advance or withdrawal / pre-mature discharge shall be allowed on the above-said FDRs without the permission of this Tribunal. The bank shall not open any joint account of the petitioners.

27.7. No cheque book or debit card shall be issued to the claimants/ petitioners without the permission of this Tribunal. In case the debit card and / or cheque book have already been issued, bank shall cancel the same before the disbursement of the award amount. The bank shall freeze the accounts of the claimants so that no debit card be issued in respect of the account of the claimant from any other branch of the bank.

27.8. That the bank shall make an endorsement on the passbook of the claimant to this effect, that no cheque book and / or debit card have been issued and shall not be issued without the permission of the Court and claimant/s shall produce the passbook with the necessary endorsement before the court on the next date fixed for compliance.

27.9. The bank shall prepare FDRs in its own name on the receipt of the award amount from the Respondent i.e. Insurance Company till the date Petitioners approach for the release of the amount and thereafter amount along with interest shall be released to the petitioner per award of this Tribunal.

27.10. On the request of the Petitioners, the bank shall transfer the saving account to any other bank of UCO bank or any other bank MAC No.2112/16 Sudha & Ors. Vs. Shah Alam & Ors. MAC No.2131/16 Praveen Kumar Vs. Shah Alam & Ors. 27/28 according to the convenience of the petitioner. The claimants can operate the saving bank account from the nearest branch of UCO Bank and on the request of the claimants, the bank shall provide the said facility.

27.11. The Petitioner/s shall furnish all the relevant documents for opening of the saving bank account and FDR to Nodal Officer, UCO Bank, KKD, Delhi.

27.12. Petitioner / claimant (s) shall file a compliance report on next date of hearing about opening of saving bank account with the nationalized bank nearby to their/his/her residence and to get endorsed from the bank that no cheque-book, debit card or any other facility like ECS/ NFFT etc. has been provided against this bank account.

28. Both the DARs filed with both petitions separately are also disposed off in terms of this judgment.

29. A copy of this judgment be given free of cost to the parties concerned. Copy of Form V duly filled shall be treated as part of this award. File be consigned to RR and a separated file for compliance be maintained for 26.11.2018. DEVENDER by DEVENDER KUMAR Date: 2018.10.22 16:50:14 +0530 Announced in open court (DEVENDER KUMAR) On 22.10.2018 PO-MACT/SHAHDARA KARKARDOOMA COURTS, DELHI MAC No.2112/16 Sudha & Ors. Vs. Shah Alam & Ors. MAC No.2131/16 Praveen Kumar Vs. Shah Alam & Ors. 28/28