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

Decided on: 19th March, 2015

\+ **MAC.APP. 486/2012**

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.
..... Appellant
Through: Ms.Suman Bagga, Advocate with Mr. Pankaj Gupta, Advocate

versus

SANJEEV @ DEV & ORS. ..... Respondents
Through: Mr. O.P. Mannie, Advocate for Respondent no.1.

\+ **MAC.APP. 626/2012**

SANJEEV @ DEV & ORS.
..... Appellants
Through: Mr. O.P. Mannie, Advocate

versus

CHHATAR PAL & ORS. ..... Respondents
Through: Ms.Suman Bagga, Advocate with Mr. Pankaj Gupta, Advocate for Respondent no.3.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

JUDGMENT

<u>G. P. MITTAL, J.</u> (ORAL)

1. These two appeals arise out of the common judgment dated 30.01.2012 passed by the Motor Accident Claims Tribunal (the Claims Tribunal) whereby compensation of Rs.8,30,000/- was awarded in favour of injured Sanjeev who suffered serious injuries in a motor vehicular accident which occurred on 04.09.2010.

2. MAC.APP.486/2012 has been preferred by Appellant Bajaj Allianz General Insurance Co. Ltd., whereas MAC. APP.626/2012 has been filed by the victim.

3. For the sake of convenience, the Appellant in MAC.APP.486/2012 shall be referred to as the Insurance Company and the Appellant in MAC.APP.626/2012 shall be referred to as the claimant.

4. Immediately after the accident, the claimant was removed to the Holy Family Hospital. Therefrom, he was referred to Jai Prakash Narayan Apex Trauma Centre, AIIMS. He suffered degloving with fracture of toes, lateral, femoral and tibial

condyles. An internal fixator was fixed. He remained admitted in Jai Prakash Narayan Apex Trauma Centre for 26 days. He suffered permanent disability. While the claim petition was pending before the Claims Tribunal, he was referred to Pt. Madan Mohan Malaviya Hospital to assess his permanent disability. The claimant was issued a Disability Certificate indicating that he had suffered 81% permanent physical impairment in relation to his right lower limb. The Claims Tribunal awarded overall compensation of Rs.8,30,000/-, which is tabulated hereunder:

Sl. No.	**Compensation under various Heads**	**Awarded by the Claims Tribunal (in Rs.)**
1.	Treatment Expenses	15,000/-
2.	Conveyance	25,000/-
3.	Special Diet & Attendant Charges	25,000/-
4.	Pain, Suffering & Loss of Amenities/Expectation of Life *etc.*	2,25,000/-
5.	Permanent Disability & Loss of future Income	5,40,000/-
	TOTAL	**8,30,000/-**

5. It is urged by the learned counsel for the Insurance Company that the claimant did not lead any evidence with regard to his profession. The Claims Tribunal hence, erred in taking functional disability to be 50%. It is also urged that the compensation awarded towards non-pecuniary damages is on the higher side.

6. On the other hand, the learned counsel for the claimant has submitted that the compensation awarded towards disability and non-pecuniary damages is on the lower side considering the nature of the injuries suffered by him. Referring to the photographs of the claimant placed on page 33 (Annexure-A) of the MAC.APP.626/2012, the learned counsel states that the claimant has been crippled for his life.

7. It is borne out from the record that the claimant not only remained admitted in Jai Prakash Narayan Apex Trauma Centre for 26 days, he also received outdoor treatment and physiotherapy for at least four months after his discharge from the hospital. The last advice for physiotherapy as per Ex.PW1/3 was given on 17.01.2011.

8. It is very unfortunate that not only the claimant failed to disclose his profession in the claim petition, even in his Affidavit produced by way of evidence, the claimant did not examine any Doctor to prove as to how his day to day life and working capacity has been affected on account of the permanent disability to the extent of 81% suffered by him in respect of right lower limb. Even if the claimant had failed to do so, the Claims Tribunal itself could have summoned the Doctor who had issued the Disability Certificate to make a real assessment of the disability affecting his working capacity; otherwise the Court has simply to speculate and make a guess work as to the impact of the permanent disability on claimant's working capacity. The Claims Tribunal was conscious of all these facts and after analysing the same, it assessed the functional disability to the extent of 50%. The medical prescriptions (OPD Cards) placed on record reveal that fixator was directed to be removed on 08.11.2010. Knee mobilisation and foot and ankle mobilisation was advised to the claimant and he was advised to report for review and assessment after one month. The claimant

again approached the Doctor on 03.01.2011 and 17.01.2011. On the basis of the nature of the injuries suffered by the claimant, it can be inferred that the claimant would have difficulty in running, squatting and even walking. In the absence of any specific evidence produced by the claimant with regard to the functional disability, assessment of 50% seems to be on the higher side. I tend to decrease the same to 40.5%. (50% of the disability in respect of the right lower limb). The compensation towards loss of future income on 40.5% functional disability would therefore, come to Rs.4,36,068/- (Rs.5,278/- x 12 x 17 x 40.5%).

9. A lumpsum compensation of Rs.2,25,000/- was awarded by the Claims Tribunal towards pain and suffering, loss of amenities and loss of expectation of life. Considering the long duration of treatment and the fact that the claimant's right leg was put in fixator and that he was hospitalised for almost a month and remained an out of patient thereafter for at least four months, the claimant would be entitled to a sum of Rs.1,00,000/- towards pain and suffering and a sum of Rs.1,25,000/- towards

loss of amenities and loss of expectation of life. Thus, the compensation awarded towards non-pecuniary damages cannot be faulted.

10. However, the claimant ought to have been granted some compensation towards loss of income during the period he remained confined to bed and could not attend to his work. (*Rattan Lal Mehta v. Rajinder Kapoor 1996 ACJ 372.)* I will award a compensation of Rs.31,668/-(Rs.5,278/- x 6) towards loss of income.

11. The compensation is recomputed hereunder:

Sl. No.	**Compensation under various Heads**	**Awarded by the Claims Tribunal (in Rs.)**	**Awarded by this Court (in Rs.)**
1.	Treatment Expenses	15,000/-	15,000/-
2.	Conveyance charges	25,000/-	25,000/-
3.	Special Diet & Attendant Charges	25,000/-	25,000/-
4.	Pain, Suffering & Loss of Amenities/Expectation of Life *etc*.	2,25,000/-	2,25,000/- (1,00,000/- +1,25,000/-)
5.	Permanent Disability & Loss of Future Income	5,40,000/-	4,36,068/-
6.	Loss of Income	-	31,668/-
	TOTAL	**8,30,000/-**	**7,57,736/-**

12. The overall compensation therefore, comes to Rs.7,57,736/-.

13. The compensation thus, stands reduced by Rs.72,264/-.

14. The excess amount of 72,264/- along with proportionate interest shall be refunded to the Insurance Company.

15. The compensation payable to the claimant shall be held in Fixed Deposit/released in terms of the orders passed by the Claims Tribunal.

16. The appeals are disposed of in above terms.

17. Pending applications also stand disposed of.

18. Statutory amount, if any, deposited shall be refunded to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

MARCH 19, 2015
pst