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

Date of Decision: 24th May, 2016

+ **MAC.APP.279/2013**

THE NEW INDIA ASSURANCE COMPANY LTD..... Appellant
Through: **Mr. K.K. Bhat, Adv..**

versus

RAHUL & ORS. Respondents
Through: **Mr. Anshuman Bal, Adv. for R-1.**

AND

+ **MAC.APP.505/2015**

RAHUL Appellant
Through: **Mr. Anshuman Bal, Adv.**

Versus

THE NEW INDIA ASSURANCE COMPANY LTD..... Respondents
Through: **Mr. K.K. Bhat, Adv.**

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Rahul (appellant in MAC Appeal No. 505/2015), then aged 9 years, suffered injuries in a motor vehicular accident that occurred on 04.05.2006 involving negligent driving of bus bearing registration No. DL 1PB 4719 (the offending vehicle), admittedly insured against third party risk for the

period in question with New India Assurance Company Ltd. (appellant in MAC Appeal No. 279/2013). The injuries included degloving injury in lower abdomen, left thigh, fractured pelvis, ruptured urethra and dislocation of left hip joint. It required surgical procedure wherein drafting was done and catheter inserted in the abdominal region to enable him to pass urine besides an artificial tube fixed just above his male organ. He was examined by a board of doctors of Deen Dayal Upadhyay Hospital which opined he to be a case of traumatic ankylosis of left hip joint and non-union fracture neck of femur rendering him permanently physically disabled 56.5% (fifty six point five) in relation to lower limbs. The disability suffered has been found to be permanent in nature.

2. Upon accident claim petition (case No. 954/2008) instituted on his behalf on 12.05.2006, the tribunal held inquiry and, by judgment dated 08.01.2013, returned a finding about injuries and disability having been suffered due to accident caused on account of negligent driving of the offending vehicle. Compensation in the sum of ₹ 15,91,691/- was awarded with interest @ 7.5% per annum, it having been calculated thus:

<i>Sr. No.</i>	<i>Compensation under various heads</i>	<i>Awarded by this Court</i>
<i>1.</i>	<i>Loss of earning Capacity (on the salary of matriculate (Rs. 3464 + 30%(inflation x12x18)</i>	<i>Rs.9,72,691/-</i>
<i>2.</i>	<i>Pain and Suffering</i>	<i>Rs.1,50,000/-</i>
<i>3.</i>	<i>Loss of Amenities</i>	<i>Rs.1,50,000/-</i>
<i>4.</i>	<i>Disfigurement and loss of marriage prospects</i>	<i>Rs.1,00,000/-</i>
<i>5.</i>	<i>Special Diet upto date of Award (Rs.25,000) conveyance upto the</i>	<i>Rs.50,000/-</i>

	<i>date of Award</i>	
6.	<i>Future Conveyance</i>	<i>Rs.50,000/-</i>
7.	<i>Future Special Diet</i>	<i>Rs. 50,000/-</i>
8.	<i>Future Treatment</i>	<i>Rs.50,000/-</i>
9.	<i>Medical Treatment upto the date of the award</i>	<i>Rs. 20,000/-</i>
	<i>Total</i>	<i>Rs.15,91,691/-</i>

3. The insurer which has been fastened with the liability by its appeal questions the computation of compensation submitting that it is exorbitant. *Per contra*, the claimant is in appeal stating that the amount towards pain & suffering is inadequate and he deserved separate award under the head of loss of marriage prospects and further that the rate of interest levied is on the lower side.

4. Having heard counsel on both sides and perusing the record, it is found that the tribunal has followed the judgment of this Court in another similarly placed case decided on 03.08.2012 as *FAO No. 445/2000 Sanjay vs. Suresh Chand & Ors.* In these circumstances, the calculation of loss of earning capacity and the awards under the various heads of non-pecuniary damages cannot be faulted.

5. It is, however, noted that the tribunal has combined the award of ₹ 1,00,000/- under two separate heads namely disfigurement and loss of marriage prospects. Given the fact that surgical procedures has resulted in appellant being constrained to carry, throughout his life, an artificial catheter and artificial tube inserted just above his male organ, separate award under the said two heads deserved to be granted. Therefore, the award of ₹ 1,00,000/- is treated to be granted towards disfigurement and further ₹

1,00,000/- is granted towards loss of marriage prospects. Given the nature of injuries suffered, the award on account of pain & suffering is increased to ₹ 2,00,000/-.

6. Following the consistent view taken by this Court [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors.*], the rate of interest is increased to 9% from the date of filing of the petition till realization.

7. The award is modified accordingly.

8. By order dated 22.03.2013 (in MAC Appeal No. 279/2013), the insurance company had been directed to deposit the entire awarded amount with upto date interest with UCO Bank, Delhi High Court Branch within the period specified whereupon 80% was allowed to be released, the balance kept in fixed deposit receipt with UCO Bank, Delhi High Court Branch. The Registrar General shall now release the balance amount kept in fixed deposit receipt to the claimant. The insurance company shall be obliged to pay the remainder of its liability under the modified award by requisite deposit with the tribunal within 30 days making it available to be released.

7. The statutory deposit, if made, shall be refunded after it is confirmed that the award has been satisfied.

8. Both appeals are disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 24, 2016/nk