

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

Date of Decision: 19th December, 2016

(i) + MAC.APP. 80/2012

ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Ravi Sabharwal, Advocate

Versus

ONIL KUMAR GULATI & ANR Respondents
Through: Mr. Navneet Goyal, Advocate for
Respondent No.1

(ii) + MAC.APP. 1080/2012

ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Ravi Sabharwal, Advocate

Versus

ANMOL SETHI & ANR Respondents
Through: Nemo

(iii) + MAC.APP. 1081/2012

ORIENTAL INSURANCE COMPANY LTD. Appellant
Through: Mr. Ravi Sabharwal, Advocate

Versus

KRISHAN & ANR Respondents
Through: Mr. Navneet Goyal, Advocate for
Respondent No.1

(iv) + **MAC.APP. 381/2013**

KRISHAN

..... Appellant

Through: Mr. Navneet Goyal, Advocate

Versus

ORIENTAL INSURANCE COMPANY LTD. & ANR.

.... Respondents

Through: Mr. Ravi Sabharwal, Advocate for
Respondent No.1

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

J U D G M E N T

(O R A L)

In the above captioned four appeals, the challenge is to grant of compensation to injured-*Onil Kumar Gulati, Anmol Sethi*, who were travelling in Innova and to *Krishan*, who was driving the said Innova, which had met with an accident with a truck, which was owned by *Naveen Kumar Garg* and was driven by *Rewati Ram*, who is not a party in these appeals. The above-captioned three appeals, are by Insurer of the truck whereas the above-captioned fourth appeal is by driver of the Innova in question, in which enhancement of compensation is sought. Service in these appeals is complete.

The above-captioned four appeals relate to a road accident which took place on 15th September, 2005 and so with the consent

of learned counsel for both the sides, the above-captioned four appeals have been heard together and are being decided by this common judgment.

The manner in which the accident in question took place is already spelt out in the opening paragraph of the impugned award. On account of injuries suffered by injured-*Onil Kumar Gulati*, he has been granted compensation of ₹1,44,767/- with interest and its break-up as per the impugned award is as under:-

(i)	Medical Expenses	:	₹91,500/-
(ii)	Special Diet/Conveyance:		₹10,000/-
(iii)	Attendant Charges	:	₹7,500/-
(iv)	Pain & Sufferings	:	₹25,000/-
(v)	Loss of Income	:	₹10,767/-
Total		:	₹1,44,767/-

On account of injuries sustained by injured-*Anmol Sethi*, compensation of ₹36,775/- with interest has been granted. Awarded amount granted to injured-*Anmol Sethi* comprises of medical expenses of ₹25,000/- and ₹11775/- on account of *loss of income* due to injuries sustained in the accident in question.

Driver-*Krishan* of the Innova had sustained injuries on his right eye in this accident, which resulted in loss of vision in his right eye which has been assessed to be 30% permanent physical disability and compensation of ₹1,30,000/- with interest has been

granted to him on this account and break-up of the awarded amount as per the impugned award is as under:-

(i)	Medical Expenses	:	₹15,000/-
(ii)	Special Diet/Conveyance	:	₹10,000/-
(iii)	Attendant Charges	:	₹5,000/-
(iv)	Pain & Sufferings, loss of Amenities etc. (Composite Amount under non-pecuniary head)	:	₹1,00,000/-
Total			: ₹1,30,000/-

On the basis of evidence led by parties, the afore-noted compensation has been granted in above-captioned first three appeals and the challenge to the grant of compensation to respondent-injured is on the ground that truck, which was insured by appellant-*Oriental Insurance Company Ltd.* was stationary and the Innova in question, had struck against it and so there was no negligence on the part of driver of the truck in question. Thus, it is submitted by learned counsel for appellant-Insurer that the liability to pay the compensation has been erroneously put upon appellant-Insurer as it was Innova in question, which was the offending vehicle. It is being so said by learned counsel for appellant-Insurer on the strength of the copy of FIR, which is on record, which indicates that driver of the Innova in question, was prosecuted in respect of the accident in question. Lastly, it is submitted by learned counsel for appellant-Insurer that since there was no negligence on the part of truck driver and so there is no question of

enhancement of compensation as sought by driver of the Innova in question. Nothing else is urged on behalf of appellant-Insurer.

On the other hand, learned counsel for driver of Innova in question, submits that stand taken by appellant-Insurer in these appeals cannot be taken for the reason that owner and driver of the truck in question had contested the claim petition before learned Tribunal and it is not the case of the appellant-Insurer that there was no collusion between the claimants and the owner of truck in question and that application under Section 170 of *Motor Vehicle Act* was filed by appellant-Insurer and so, the plea of negligence ought not to be considered in appeals preferred by appellant-Insurer. To seek enhancement of compensation on behalf of driver of the Innova in question, it is submitted that no compensation has been granted by learned Tribunal on account of 30% permanent disability suffered by injured-Krishan, driver of the Innova in question and infact compensation of at least ₹2,00,000/- more ought to be awarded to the driver of Innova in question. Nothing else is urged on behalf of appellant-Krishan.

Upon hearing and on perusal of impugned award, evidence on record, I find that owner of truck in question had contested the case before learned Tribunal and so appellant-Insurer is precluded from challenging the impugned award on the ground lack of negligence. Such a view is being taken because no application under Section 170 of *Motor Vehicle Act, 1988* was filed by Insurer.

Even otherwise there is nothing on record to show that there was any collusion between owner of the vehicle in question and claimants. Reliance placed by learned counsel for appellant-Insurer upon FIR and the site plan of spot is of no avail, for the reason that these documents have not been put in cross examination to driver-*Krishan*, who was driving the Innova in question and so, finding of negligence rendered in the impugned award cannot be faulted with. Otherwise also, the quantum of compensation awarded to injured appears to be reasonable.

Consequently, the above-captioned three appeals filed by appellant-Insurer are dismissed. As regards the above-captioned fourth appeal, filed by injured-*Krishan* driver of the Innova in question, I find that the compensation awarded to him under different heads includes the compensation of ₹1 lac for the permanent disability suffered by him under the head of *loss of amenities etc.*. So, no case for enhancement of compensation granted to injured-*Krishan* is made out. As such, above captioned fourth appeal is also dismissed.

(SUNIL GAUR)
Judge

DECEMBER 19, 2016

vn