* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: March 27, 2017

\+ **MAC.APP.217/2009**

ORIENTAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. Amit Gaur & Mr. Pradeep Gaur, Advocates

Versus

MAHESH & ORS. ..... Respondents
Through: Mr. Anuj Soni, Advocate with claimant in person

\+ **MAC.APP.14/2017**

MAHESH ..... Appellant
Through: Mr. Anuj Soni, Advocate with claimant in person

Versus

ORIENTAL INSURANCE CO. LTD. & ORS. ... Respondents
Through: Mr. Amit Gaur & Mr. Pradeep Gaur, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

% **ORAL**

1. In the above captioned two appeals, the challenge is to impugned Award of 17th March, 2009 which grants compensation of ₹9,08,830/- with interest @8% *per annum* on account of injuries sustained by Claimant-*Mahesh* in a road accident on 12th April, 2005. Appellant is Insurer of bus in question. The facts as noted in the impugned Award

need no reproduction. Suffice to note that the challenge in the above-captioned first appeal is to the quantum of compensation granted whereas in the above-captioned second appeal, enhancement of compensation is sought by Claimant-*Mahesh.*

2. As per order of 14th September, 2010, service is complete.

3. With consent of learned counsel for the parties, the above-captioned two appeals have been heard together as they arise out of common impugned Award and are being decided by this judgment.

4. Learned counsel for Insurer submits that the functional disability ought to be taken to be 30% as the Certificate issued by Institute of Human Behaviour and Allied Sciences (IHBAS) gives the disability as 58.77%. It is next submitted by Insurer's counsel that the addition towards *'future prospects'* has been erroneously made as the Claimant/injured was working as a Field Boy and there is no documentary evidence regarding his giving tuitions and the monthly income ought to have been taken as ₹5,000/- per month instead of ₹7,500/- per month.

5. It is also submitted by Insurer's counsel that it is a case of fake driving licence and so, Insurer needs to be exonerated as the liability to pay the compensation is of the driver and owner of the vehicle in question, who had neither contested before learned Tribunal nor before this Court.

6. On the contrary, learned counsel for Claimant/Injured submits that the compensation awarded is inadequate and so, it deserves to be suitably enhanced as the disability has now increased to 62.77%.

7. Copy of fresh Disability Certificate has been shown to the Court but is not formally taken on record for the reason that it has not been proved on record by way of additional evidence. It is pointed out by learned counsel for Claimant-Injured that he is present in the Court and actual disability suffered by him can be seen by this Court itself. Regarding deduction of 1/3rd towards miscellaneous expenses, it is submitted that this deduction is uncalled for as in injury cases, such deduction is never made. It is next submitted by learned counsel for Claimant-injured that no compensation under the head of amenities of life has been granted, which ought to be granted. It is pointed out that compensation of ₹20,000/- granted by learned Tribunal for loss of marriage prospects and enjoyment of life is wholly inadequate and it needs to be appropriately enhanced. Nothing else is urged on behalf of either side.

8. Since this Court had an opportunity to interact with Claimant-Injured present in the Court, therefore, it can be unhesitantly said that his functional disability is not less than 50% and so, learned Tribunal has erred in taking functional disability as 58.6%. Learned Tribunal has assessed the loss of earning capacity as ₹6,32,880/- on account of mental and physical disability, after deducting 1/3 towards miscellaneous expenses, whereas in injury cases there is no provision for deduction towards miscellaneous expenses and so, deduction of ₹3,16,440/- under this head is unjustified. Learned Tribunal has also erred in doubling the monthly income from ₹5,000/- to ₹10,000/- by adding future prospects. Since Claimant-Injured was not in permanent employment, therefore,

addition towards future prospects is unjustified. However, computation of monthly income of Claimant-Injured at ₹5,000/- p.m. is unwarranted for the reason that there is positive evidence of Claimant-Injured to the fact that he was earning ₹10,000/- p.m.by giving tuitions also and there is no cross objection of Claimant-Injured on this aspect. In view thereof, income of Claimant-Injured is taken to be ₹10,000/- p.m.

9. While taking into consideration the functional disability to be 50% and by applying the multiplier of 18, the loss of earning capacity is reassessed as under:-

₹10,000/- X 12 X 18 X 50% = ₹10,80,000/-

10. Under the non-pecuniary heads, compensation granted appears to be on the lower side. The compensation granted under the head of *'loss of marriage prospects'* is enhanced from ₹20,000/- to ₹1,00,000/- and Rs.1,00,000/- is granted under the head of *"loss of amenities of life"*. The compensation granted under the other heads i.e. special diet and conveyance, future medical expenses, pain and suffering and medical expenses incurred appear to be just and reasonable and is accordingly maintained.

11. In the light of aforesaid, the reassessed compensation payable to Claimant-Injured is as under: -

1.	*Loss of earning capacity*	*₹10,80,000/-*
2.	*Loss of marriage prospects*	*₹1,00,000/-*
3.	*Loss of amenities of life*	*₹1,00,000/-*
4.	*Special diet and conveyance*	*₹15,000/-*
5.	*Future medical expenses*	*₹1,75,000/-*

6.	*Pain and sufferings*	*₹50,000/-*
7.	*Medical expenses incurred*	*₹15,950/-*
	Total	***₹15,35,950/-***

12. So far as exoneration of Insurer from paying the awarded amount is concerned, Supreme Court in *Pushkar Mehra Vs. Brij Mohan Kushwaha & ors.* 2015 (12) SCC 688 has reiterated that it is the duty of Insurer to pay in the first instance and then to recover it from driver and owner of offending vehicle in question.

13. In view of aforesaid, compensation awarded is enhanced from ₹9,08,830/- to ₹15,35,950/- *(rounded off to* ₹15,36,000/-). Appellant-Insurer is granted six weeks' time to deposit the enhanced compensation amount with interest @8% p.a. from the date of filing of the claim petition till the date of deposit with learned Tribunal, who shall directly release ₹2,27,170/- into the bank account of Claimant-Injured, on his furnishing bank account details and the remaining amount of ₹4,00,000/- be deposited into fixed deposit receipt in a nationalized bank in terms of impugned Award.

14. Statutory deposit, if any, be refunded to Insurer as per Rules.

15. The above-captioned two appeals are accordingly disposed of while modifying impugned Award in aforesaid terms.

(SUNIL GAUR)
JUDGE

MARCH 27, 2017
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