

\$~R-18 & R-19

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

Date of decision: January 20, 2016

(i) + **MAC.APP. 551/2008**
NATIONAL INSURANCE CO LTD Appellant
Through: Mr. L. K. Tyagi, Advocate
versus

SANTOSH & ORS Respondents
Through: Mr. S.N. Parashar, Advocate for
respondent No.1-claimant

(ii) + **MAC.APP. 98/2009**
SANTOSH Appellant
Through: Mr. S.N. Parashar, Advocate
versus

ASHWANI SHARMA & ORS. Respondents
Through: Mr. L. K. Tyagi, Advocate for
respondent No.2

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
% **ORAL**

Impugned Award grants compensation of ₹4,65,520/- with interest to respondent-claimant in respect of grievous injuries suffered by one *Santosh* in a road accident on 27th April, 2004. In the above-captioned first appeal, reduction of compensation is sought whereas in the above-

captioned second appeal, enhancement of compensation is sought. Since these two appeals arise out of common impugned Award of 27th August, 2008, therefore, with the consent of learned counsel for the parties, these appeals are heard together and are being disposed of by this common judgment.

The factual matrix of this case already stands noted in the opening paragraph of impugned Award and so, it needs no reproduction. Suffice to note that as per Disability Certificate (Ex.P-2), the disability suffered of lower limb is to the extent of 60% due to *paraparesis*. The injured, a driver by profession, was aged 25 years at the time of accident and was earning ₹3,320/- per month and by applying the multiplier of 17, '*loss of earning capacity*' is taken by learned Tribunal to be ₹4,03,920/-. Under the other Heads, ₹39,600/- towards '*loss of income for a period of one year*', ₹15,000/- towards '*Medical Expenses*' and ₹7,000/- towards '*Pain and Suffering*' has been granted by learned Tribunal. On the basis of the evidence led by the parties, impugned Award has been passed. As per order of 13th July, 2009, service is complete. Respondent No.2-owner remains unrepresented.

In the above-captioned first appeal, the challenge to impugned Award by learned counsel for appellant-Insurer is on the ground that respondent-injured was an employee of respondent-owner and was liable to be compensated under *the Workmen's Compensation Act* and so, as per Section 167 of *the Motor Vehicles Act*, the liability to pay the compensation awarded ought to be restricted to the extent as provided under *the Workmen's Compensation Act*. To submit so, reliance is placed upon Supreme Court's decision in *National Insurance Co. Ltd. v.*

Prembai Patel & Ors., II (2005) ACC 361.

In the above-captioned second appeal, learned counsel for appellant-injured submits that the compensation awarded is on the lower side and it needs to be suitably enhanced. To submit so, reliance is placed upon Supreme Court's decision in *K. Janardhan v. United India Insurance Co. Ltd. and Another*, 2008 ACJ 2039 wherein it has been held that in a case of driver, 65% disability actually results in 100% disability. Thus, enhancement of compensation is sought. Nothing else is urged by either side.

Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that injured is covered under *the Workmen's Compensation Act* and so, liability of insurer is restricted to the compensation payable under the aforesaid enactment. Before proceeding further, it is required to be considered as to whether the functional disability would be 60% or 100%.

The Disability Certificate (Ex.P-2) categorically records that the extent of disability suffered is 60% due to *paraparesis* of the lower limb. In the cross-examination of injured, it has come that he cannot drive any vehicle. Merely because the injured is a driver by profession and is not able to drive any vehicle, would not mean that he cannot earn his livelihood by doing any other work. So, functional disability cannot be taken as 100%. The '*General Damages*' assessed by learned Tribunal are as per the formula prescribed under Section 163-A of *the Motor Vehicles Act* as the petition was filed under Section 163-A of *the Motor Vehicles Act* and therefore, the '*General Damages*' are assessed on correct basis. No case for enhancement of compensation awarded is made out.

In view of the aforesaid, the liability of insurer to pay the compensation as per *the Workmen's Compensation Act, 1923* would be ₹4,29,481/-. In view of Supreme Court's decision in *Prembai Patel (supra)*, the liability to pay rest of the awarded amount would be of owner of the vehicle in question, who has chosen not to contest this appeal. In the final analysis, quantum of compensation as granted under the impugned Award is maintained, but the liability of insurer to pay the awarded amount is restricted to ₹4,29,481/- with interest. Liability to pay the rest of the awarded amount i.e. ₹36,039/- would be of owner.

In pursuance of order of 11th February, 2009, appellant has deposited the entire awarded amount, out of which except ₹3 lacs, rest of the awarded amount has been already released to injured. In this view of the matter, appellant is granted permission to recover the amount of ₹36,039/- from owner of the vehicle in question alongwith the interest as awarded by learned Tribunal, which is in consonance with the Supreme Court's decision in *Rajesh & Ors vs. Rajbir Singh & Ors.*, (2013) 9 SCC 54.

The statutory deposit, if any, made by appellant be refunded to appellant as per Rules.

With the aforesaid modification, the above-captioned two appeals are disposed of.

(SUNIL GAUR)
JUDGE

JANUARY 20, 2017

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