$~12

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

% **Date of Decision: 04th January, 2017**

\+ MAC.APP. 590/2015

AMAR @ AMAR KUMAR SINGH ..... Appellant
Through: Mr. Jay Kishor Singh, Adv.

versus

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LTD. & ORS ..... Respondents
Through: Mr. Rajat Brar, Adv. for respondent no.3.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. The appellant has challenged the award of the Claims Tribunal whereby compensation of Rs.1,72,089.57/- has been awarded to the appellant. The appellant seeks enhancement of the award amount.

2. On 21st June, 2013, the appellant was hit from behind by vehicle No.DL2W-04245 which resulted in C3 body fracture with fracture of left C3 lamina. The appellant was admitted in AIIMS Trauma Centre where he underwent spinal cord surgery in which anterior plating and rod was placed on spinal cord apart from stitching of twenty five head injuries. The appellant underwent C3 corpectomy, C2-3 and C3-4 discectomies, iliac crest graft placement and anterior plating followed by C2 pedicle screws, C3 and C4 lateral mass screws and rod placement with placement of autologous bone graft for PLF. The appellant was discharged on 8th July, 2013.

3. The Claims Tribunal referred the appellant to the Medical Board of Safdarjung Hospital which gave the opinion dated 9th May,

2014 which is reproduced hereunder:

> *"The Medical Board held under the chairmanship of Dr. Vinu Khanna and members opined that this is case of RTA with diagnosis operated case of C3 Body Fracture with Fracture of left C3 Lamina which is 11 months old. So, permanent disability cannot be given because the patient is under the process of recovery."*

4. The Claims Tribunal awarded Rs.7,921.57 towards medicine and treatment, Rs.30,000/- towards conveyance and special diet, Rs.18,000/- towards attendant charges, Rs.51,168/- towards loss of income, Rs.50,000/- towards pain and suffering and Rs.15,000/- towards loss of amenities of life. The total compensation awarded is Rs.1,72,089.57/-.

5. During the pendency of the appeal, the appellant was again referred to the Medical Board of Safdarjung Hospital vide order dated 17th August, 2016 in pursuance to which the appellant was examined by the Board and the permanent disability of the appellant is assessed as 11% in respect of four limbs. Relevant portions of the medical report dated 1st September, 2016 is reproduced hereunder:

> *"The Board is of the opinion that the patent has post traumatic cervical cord injury with fixated fracture C3, presently having fair function. He has Permanent Physical Impairment (PPI) of 11% (Eleven Percent) in relation to all four limbs."*

6. Learned counsel for the appellant urged at the time of the hearing that the functional disability of the appellant be taken as 100% as the appellant is unable to do any work. The appellant seeks loss of earning capacity by taking his functional disability as 100%. The appellant also seeks enhancement of compensation under the heads of medicine and treatment, conveyance and special diet, pain and suffering, loss of amenities of life, disfiguration and loss of matrimonial prospects.

7. Learned counsel for respondent no.1 urged that the compensation awarded by the Claims Tribunal is just, fair and reasonable. It is further submitted that the functional disability of the appellant should not be taken more than 11%.

8. The appellant is present in Court along with his counsel and his condition has been seen. The appellant submits that he is unable to turn his neck and pick up heavy weights. Considering the injuries suffered by the appellant namely C3 corpectomy, C2-3 and C3-4 discectomies, iliac crest graft placement and anterior plating followed by C2 pedicle screws, C3 and C4 lateral mass screws and rod placement with placement of autologous bone graft for PLF and the present condition of the appellant, the functional disability of the appellant is taken as 30%. Taking the income of the appellant as Rs.8,528/-, applying the multiplier of 18 and taking the functional disability as 30%, the loss of earning capacity is assessed as Rs.5,52,614.4/-.

9. The Claims Tribunal has awarded compensation of Rs.50,000/- towards pain and suffering and Rs.15,000/- towards loss of amenities of life which are on lower side and warrant enhancement. The compensation for pain and suffering is enhanced from Rs.50,000/- to Rs.1 lakh. The compensation of loss of amenities of life is enhanced from Rs.15,000/- to Rs.40,296/-. Rs.50,000/- is awarded towards disfiguration and Rs.50,000/- towards loss of matrimonial prospects. The compensation awarded under the heads of medicines and treatment, conveyance and special diet, attendant charges as well as loss of income are fair and reasonable. The appellant is entitled to total compensation of Rs.9 lakh as per breakup given hereunder:

Loss of Income	Rs.	51,168.00
Medicine and Treatment	Rs.	7,921.57
Conveyance and special diet	Rs.	30,000.00
Attendant charges	Rs.	18,000.00
Disfiguration	Rs.	50,000.00
Loss of matrimonial prospects	Rs.	50,000.00
Pain and suffering	Rs.	1,00,000.00
Loss of amenities of life	Rs.	40,296.00
Loss of earning capacity	Rs.	5,52,614.40
TOTAL	Rs.	8,99,999.97
		(Rounded of Rs.9,00,000)

10. The appeal is allowed and the award amount is enhanced from Rs.1,72,089.57/- to Rs.9 lakh along with interest @ 9% per annum w.e.f. 10th December, 2015 till realization. The enhanced award amount be deposited by the appellant with State Bank of India, District Court Complex, Sector-10, Dwarka, New Delhi-110075 by means of a cheque drawn in the name of State Bank of India A/c Amar Kumar Singh.

11. Upon the aforesaid amount being deposited, the State Bank of India shall release Rs.75,000/- to appellant and keep the balance amount in 11 FDRs as per details given hereunder:

Sl. No.	<u>Appellant</u> FDR amount in percentage	Duration of FDR
1.	**5%**	1 Year
2.	**5%**	2 Years
3.	**5%**	3 Years
4.	**5%**	4 Years
5.	**5%**	5 Years

6.	**5%**	6 Years
7.	**5%**	7 Years
8.	**5%**	8 Years
9.	**5%**	9 Years
10.	**5%**	10 Years
11.	**50%**	10 Years
The last FDR of 50%, on maturity shall be again renewed by issuing 10 FDRs of 5% each for a period of 1 year, 2 years, 3 years, 4 years, 5 years, 6 years, 7 years, 8 years, 9 years and 10 years.		

12. The monthly interest on all the FDRs of appellant shall be credited in his individual savings bank account No.35091139935 with State Bank of India, District Court Complex, Sector-10, Dwarka, New Delhi-110075 (IFS Code No.SBIN0011566).

13. At the time of maturity, the fixed deposit amount shall be automatically credited in the individual savings bank account of the appellant.

14. All the original FDRs shall be retained by State Bank of India. However, the photocopies of the same shall be provided to the appellant.

15. No cheque book or debit card be issued to the claimants/respondents without permission of this Court.

16. No loan or advance or pre-mature discharge shall be permitted without the permission of this Court.

17. Copy of this judgment be given *dasti* to counsels for the parties.

JANUARY 04, 2017 **J.R. MIDHA, J.**

dk