

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

Date of Decision: August 14, 2018

+ **MAC.APP. 312/2013**

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LTD.

..... Appellant

Through: Ms. Neerja Sachdeva, Advocate

Versus

SRIN NIWAS SHUKLA & ORS.

.....Respondents

Through: Mr. Anshuman Bal, Advocate for
respondent No. 1

Mr. Saquib Arbab and Mr.
Abhishek Grover, Advocates for
respondent Nos. 2 and 3

+ **MAC.APP. 66/2018**

SRI NIWAS SHUKLA

..... Appellant

Through: Mr. Anshuman Bal, Advocate.

Versus

BAJAJ ALLIANZ GENERAL INSURANCE COMPANY LTD. &
ORS.

.....Respondents

Through: Ms. Neerja Sachdeva, Advocate
for respondent No.1

Mr. Saquib Arbab and Mr.
Abhishek Grover, Advocates for
respondent Nos. 2 and 3

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 22nd January, 2013 grants compensation of ₹10,37,140/- with interest @ 7.5% *per annum* to Sri Niwas, aged 49 years

(hereinafter referred to as *Injured*) on account of grievous injury suffered by him in a vehicular accident, which took place on 14th July, 2007.

2. In the above-captioned first appeal, *Bajaj Allianz General Insurance Company Ltd.* (hereinafter referred to as *Insurer*) seeks recovery rights against owner and driver of the vehicle in question, whereas in the above-captioned second appeal, enhancement of compensation is sought by Claimants. Since both the appeals arise out of common impugned Award, therefore, with the consent of learned counsel for the parties, both the appeals have been heard together and are being decided by this common judgment.

3. The factual background of this case, as noticed in the impugned Award, is as under:-

“The case of the petitioner is that on 14.07.2007 at about 9.30 a.m. while the petitioner was driving his TSR and while he reached at Main Najafgarh Road, Village Baprolla, Nangloi, Delhi, in the meantime a bus bearing No. DL-1PA-0814 which was being driven by its driver/respondent no. 1 rashly and negligently hit the TSR of the petitioner. Resultantly, the petitioner sustained grievous injuries. In total, the petitioner have claimed Rs. 20,00,000/- as compensation on account of the injuries sustained by him in the accident.”

4. To render the impugned Award, the *Motor Accident Claims Tribunal, West District, Delhi* (hereinafter referred to as ‘the Tribunal’) has relied upon evidence of Injured and as per Disability Certificate (*Ex. PW3/1*), the Injured had suffered 50% permanent disability in relation to brain and the functional disability has been taken by the Tribunal at 100%. On the strength of evidence recorded, impugned Award has been

rendered. The breakup of compensation awarded by the Tribunal is as under:-

<i>Treatment expenses</i>	<i>₹3,50,000/-</i>
<i>Pain and Sufferings</i>	<i>₹50,000/-</i>
<i>Conveyance and special diet</i>	<i>₹25,000/-</i>
<i>Compensation towards loss of income during treatment period</i>	<i>₹20,820/-</i>
<i>Compensation on account of disability.</i>	<i>₹5,41,320/-</i>
<i>Loss of enjoyment of life</i>	<i>₹50,000</i>
<i>Total</i>	<i>₹ 10,37,140/-</i>

5. Learned counsel for Insurer assails impugned Award on the ground that recovery rights have been wrongly denied to Insurer despite the fact that the insured vehicle was being run without Permit. It is submitted by Insurer's counsel that the Tribunal has erred in relying upon the evidence of the owner, driver of the insured vehicle and the evidence of owner of the workshop in question, to give the benefit of Section 66 (3)(p) of *the Motor Vehicles Act, 1988* to the owner and driver of insured vehicle on the basis of the testimonies of these interested witnesses. It is pointed out that there is no evidence on record to show that insured vehicle was having a Fitness Certificate. Thus, it is submitted that recovery rights ought to be granted to Insurer against owner and driver of the insured vehicle in question.

6. On the contrary, learned counsel for owner and driver of the insured vehicle refutes the aforesaid stand taken on behalf of Insurer and supports the impugned Award. Reliance is placed by learned counsel for owner and driver of the insured vehicle, upon Supreme Court's decision

in *State of Orissa and Others Vs. Bijaya C. Tripathy*, (2004) 7 SCC 139 to submit that the benefit of Section 66 of *the Motor Vehicles Act, 1988* has been rightly extended by the Tribunal to owner and driver of the insured vehicle.

7. On the other hand, learned counsel for Injured adopts the aforesaid stand taken on behalf of driver and owner of the insured vehicle in question and submits that quantum of compensation granted by the Tribunal is inadequate. Learned counsel for Injured seeks enhancement in the quantum of compensation awarded on the ground that income of Injured ought to have been assessed at ₹8,000/- per month and that the Tribunal has erred in assessing Injured's income on the basis of minimum wages payable to a matriculate. It is submitted that compensation awarded by the Tribunal to Injured is neither adequate nor reasonable and so, it needs to be substantially enhanced. It is further submitted by Injured's counsel that the interest @ 7.5% *per annum* granted by the Tribunal on the awarded compensation is on lower side and it needs to be enhanced to 9% *per annum*.

8. It is also submitted by learned counsel for the Injured that the Tribunal has erred in not making addition towards '*future prospects*' of Injured. Reliance is placed upon Supreme Court's decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.*, (2017) 16 SCC 680 to seek addition of 25% towards '*future prospects*'.

9. Upon hearing and on perusal of the impugned Award, evidence on record and the decisions cited, I find that in the face of evidence of *Proprietor of the Prem Coach Repair Workshop (R2W2)*, the benefit of Section 66 (3) (p) of *the Motor Vehicles Act, 1988* accrues to owner and

driver of the insured vehicle in question. The Tribunal has rightly relied upon Section 66 (3) (p) of *the Motor Vehicles Act, 1988* to deny the recovery rights to Insurer. It is true that Supreme Court in *Bijaya (supra)* has made passing reference as to a valid certificate of fitness of insured vehicle, but I find that on this aspect, there is no cross-examination of driver and owner of the insured vehicle in question. So, recovery rights cannot be granted to the Insurer. In the considered opinion of this Court, the Tribunal has rightly declined recovery rights to Insurer.

10. As regards assessment of income of Injured by the Tribunal, I find that the Tribunal has erred in adopting minimum wages payable to a matriculate as in cross-examination, a suggestion was put to Injured, which is as under:-

“It is wrong to suggest that I was not earning Rs. 8,000/- per month”.

11. In light of the aforesaid and in view of the ground realities, it is deemed appropriate to assess the income of Injured at ₹8,000/- per month. The Tribunal has erred in not making any addition towards ‘*future prospects*’. It is noted in the impugned Award that Injured was on the verge of attaining age of 50 years on the day of the accident. In view of Supreme Court’s Constitution Bench decision in *Pranay Sethi (Supra)*, addition of 25% towards ‘*future prospects*’ has to be made.

12. As far as application of multiplier is concerned, I find that since the age of Injured was less than 50 years and more than 49 years on the day of the accident, therefore, the Tribunal has rightly applied the multiplier of 13 as per Supreme Court’s decision in *Sarla Verma (Smt.) & Ors. Vs. Delhi Transport Corporation & Anr.* (2009) 6 SCC 121. In view of the

evidence on record, I find that the Tribunal has rightly assessed the functional disability of Injured at 100%. In light of above, the '*loss of future earning capacity*' of Injured is re-assessed as under:-

$$₹8,000/- \times 12 \times 13 \times \frac{125}{100} = ₹15,60,000/-$$

13. In the face of Disability Certificate (*Ex. PW3/1*) and the evidence of Injured, I find that the Tribunal has erred in awarding meager compensation under the '*non-pecuniary heads*'. Since the functional disability of Injured has been assessed at 100%, therefore, the compensation under the head of '*pain and suffering*' is enhanced from ₹50,000/- to ₹1,00,000/- and the compensation under the head of '*Loss of enjoyment of life*' is also enhanced from ₹50,000/- to ₹1,00,000/-. However, compensation granted by the Tribunal under the other '*non-pecuniary heads*' is found to be adequate and is hereby maintained. Accordingly, the compensation payable to Injured is reassessed as under:-

Loss of future earning capacity	₹ 15,60,000/-
Medical expenses	₹ 3,50,000/-
Loss of income during treatment	₹ 20,820/-
Conveyance and special diet	₹ 25,000/-
Pain and suffering	₹ 1,00,000/-
Loss of enjoyment of life	₹ 1,00,000/-
Total	₹ 21,55,820/-

14. Consequentially, the compensation awarded by the Tribunal to Injured stands enhanced from ₹10,37,140/- to ₹21,55,820/-. The enhanced compensation be deposited by Insurer with the Tribunal within six weeks from today. As far as interest granted by the Tribunal is

concerned, a Three Judge Bench of Supreme Court in a recent decision of *Jagdish v. Mohan and Others*, (2018) 4 SCC 571 has granted interest @ 9% *per annum* on the awarded compensation and so, in the instant case, it is directed that the re-assessed compensation shall carry interest @ 9% *per annum*. The awarded compensation be disbursed to Injured in manner as indicated in the impugned Award. Statutory deposit, if any, be refunded to Insurer.

15. With aforesaid directions, the above captioned two appeals are accordingly disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 14, 2018
p'ma