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

Date of Decision: July 17, 2018

\+   **MAC.APP.120/2018**

AJAY PAL KHARI ..... Appellant

Through: Mr. A. K. Mishra, Advocate

Versus

VIJAY KUMAR & ANR (ICICI LOMBARD GENERAL INSURANCE) ..... Respondents

Through: Ms. Manu Kushwaha, Advocate for R-1.

\+   **MAC.APP.164/2018 & CM Nos. 5388/2018 & 26302/2018**

ICICI LOMBARD GENERAL INS CO LTD ..... Appellant

Through: Ms. Manu Kushwaha, Advocate

Versus

AJAY PAL KHARI AND ANR ..... Respondents

Through: Mr. A. K. Mishra, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. In the above captioned first appeal, enhancement of compensation is sought, whereas in the above captioned second appeal, negligence of driver of the insured vehicle is disputed and in the alternative, reduction in the quantum of compensation is sought. Since both the appeals arise out of common impugned judgment, 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.

2. Impugned Award of 11th October, 2017 grants compensation of ₹7,15,000/- with interest @ 9% per annum to Injured-*Ajay Pal,* aged 44

years, on account of grievous injury suffered by him in a vehicular accident, which took place on 27th May, 2014. The facts as noticed in the impugned Award are as under:-

> *"It is stated in the claim petition filed by the claimant that on 27.05.2014, at about 02:00 pm, he was coming from Kalandi Kunj to Tehkhand Village on motorcycle bearing no. DL-3SAL-9059 as pillion rider. He further stated that the said motorcycle was being driven by respondent no.1 in a very rash and negligent manner, as a result of which the motorcycle slipped on the road, due to which, the claimant fell down on the road and sustained injuries."*

3. To render the impugned Award, learned Motor Accident Claims Tribunal *(hereinafter referred to as the "Tribunal")* has relied upon evidence of Injured and as per disability certificate, Injured had suffered 51% permanent disability in the left leg. On the strength of evidence recorded, impugned Award has been rendered. The breakup of compensation awarded by Tribunal is as under:-

Head of Compensation	**Amount(in Rs.)**
Loss of Income during treatment	₹51,870/-
Loss of Amenities of life	₹ 10,000/-
Future Income	₹ 4,35,708/-
Pain & Suffering	₹ 10,000/-
Special Diet	₹ 10,000/-
Conveyance	₹ 10,000/-
Attendant Charges	₹ 10,000/-
Loss of enjoyment and life	₹ 10,000/-
Medical Expenses	₹ 1,47,406
Mental and physical Shock	₹ 10,000/-
Disfiguration	₹ 10,000/-
Total	₹ 7,14,984/- (rounded off) ₹ 7,15,000/-

4. Learned counsel for Injured submits that quantum of compensation granted by the Tribunal is inadequate. To seek enhancement of compensation, it is submitted that the Tribunal has erred in not making addition towards future prospects as the Injured was working as a transporter, that is to say that Injured was managing a transport company. It is pointed out by learned counsel for Injured that Injured was hospitalized for a period of three months but his treatment continued for a period of two years and that compensation granted by the Tribunal under different heads is meager and needs to be suitably enhanced.

5. On the contrary, learned counsel for Insurer submits that accident in question took place due to negligence of the Injured and there was no fault of driver of the insured vehicle. It is pointed out that there is neither any documentary proof regarding the nature of job of Injured nor about his income. It is submitted that there is no documentary evidence to show that Injured was hospitalized for a period of three months. It is pointed out that the period of hospitalization of Injured was of one week only. It is pointed out by learned counsel for the Insurer that compensation granted by the Tribunal is adequate and no case for its enhancement is made out.

6. Upon hearing and on perusal of impugned Award and the evidence on record, I find that insured motorcycle was being driven by Vijay Kumar who has not come forward to depose against Injured who was a pillion rider. There is positive evidence of Injured to the effect that accident had taken place due to rash and negligent driving of abovesaid Vijay Kumar. Regarding this accident, Injured had made a complaint

(Exhibit PW1/C) to the local police but no FIR was registered. The delay in making complaint is explained by Injured who has deposed that on the request of Vijay Kumar-driver of insured motorcycle, he had not made complaint to the police on the assurance that said Vijay Kumar would extend all financial help towards the treatment of Injured and when it was not done, then only complaint to the police was made and thereafter, a claim petition was filed. In the face of evidence on record, it cannot be said that there is no negligence of driver of the insured vehicle. The Tribunal has rightly relied upon the evidence of Injured to hold that the accident in question had taken place due to rash and negligent driving of driver of the insured vehicle.

7. As per the disability certificate of Injured on record, he had sustained 51% permanent disability in the left lower limb. In the light of evidence on record, it can be safely said that the Tribunal has rightly assessed the functional disability of the Injured to be 25%.

8. So far as compensation granted on account of *'loss of income due to accident'* is concerned, I find it to be adequate. Since there was no proof of income of the Injured, therefore, the Tribunal has rightly assessed the income of the Injured on minimum wages payable to a matriculate and has applied a multiplier of 14 to assess *'loss of earning capacity due to disability suffered'* in this accident. However, no addition towards future prospects has been made. In view of Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680, addition of 25% towards future prospects is granted as the injured was 44 years of age on the date of

incident. Accordingly, loss of earning capacity due to disability suffered in this accident, is re-assessed as under:-

₹ 2,593.50/- X 12 X 14 X 125/100 = ₹ 5,44,635/-

9. Considering that Injured had remained under treatment for more than one year, the compensation granted under the '*non pecuniary heads*' is certainly on the lower side. Compensation of ₹10,000/- only granted under the head of '*pain and suffering*' and ₹ 10,000/- under the head of '*mental and physical shock*' is clubbed together under the head of '*pain and suffering*' and the compensation granted under this head is enhanced to ₹ 75,000/-. Compensation granted under the head of '*loss of amenities of life*' is also enhanced to ₹ 50,000/-.

10. In the face of the evidence on record, I find that compensation granted by the Tribunal under the remaining heads is justified and no case for reduction or enhancement thereof is made out.

11. Consequentially, compensation payable to the Injured is reassessed as under: -

Head of Compensation	**Amount (in Rs.)**
Loss of Income during treatment	₹51,870/-
Loss of Amenities & enjoyment of life	₹ 60,000/-
Loss of earning capacity due to disability suffered	₹ 5,44,635/-
Pain and suffering	₹ 75,000/-
Special Diet	₹ 10,000/-
Conveyance	₹ 10,000/-
Attendant Charges	₹ 10,000/-
Medical Expenses	₹ 1,47,406
Disfiguration	₹ 10,000/-
	₹ 9,18,911/-

12. In view of aforesaid, the quantum of compensation is enhanced from ₹7,15,000/- to ₹9,18,911/-. The enhanced compensation be deposited by Insurer with the Tribunal within six weeks from today. The re-assessed compensation shall carry interest @ 9% *per annum* and it be disbursed in the ratio and manner as indicated in the impugned Award. Statutory deposit, if any, be refunded to Insurer.

13. Both these appeals are accordingly disposed of while modifying the impugned Award in the aforesaid terms.

(SUNIL GAUR)
JUDGE

JULY 17, 2018
SRwt