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

Date of Decision: July 10, 2018

\+   **MAC.APP.135/2013**

RELIANCE GENERAL INS. CO.LTD. ..... Appellant
Through: Mr. Arun Yadav, Advocate

Versus

DIL BAGH SINGH AND ORS. ..... Respondents
Through: Mr. O.P.Mannie, Advocate for respondent No.1
Mr. Kanwal Chaudhary, Advocate for respondent No.3

\+   **MAC.APP.654/2013**

DIL BAGH SINGH AND ORS. .....Appellants
Through: Mr. O.P.Mannie, Advocate

Versus

RELIANCE GENERAL INS. CO.LTD. ..... Respondents
Through: Mr. Arun Yadav, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. Impugned Award of 17th December, 2012 grants compensation of ₹19,24,580/- with interest @ 7.5 % *per annum* to respondent/injured-*Dil Bagh Singh,* aged 35 years, on account of grievous injury suffered by him in a vehicular accident, which took place on 16th February, 2008. The above-captioned first appeal is by the Insurer to seek reduction of the quantum of compensation granted, whereas in the above-captioned second appeal, Injured seeks enhancement in the quantum of compensation granted by the Tribunal.

2. The facts, as noticed in the impugned Award, are as under:-

> *"On 16.02.2008 at about 10:00 p.m, Dil Bagh Singh was sleeping on one side of the road at Azadpur Fruit Mandi, near shed No. 9, Jahangir Puri, Delhi. Suddenly, a truck bearing registration No. HR38-J-6381 being driven by R1 rashly, negligently and at a very fast speed without taking necessary precautions and without blowing horn violently hit the petitioner with great force and ran over both his legs. Petitioner was removed to BJRM Hospital, where he was given first aid. Thereafter, he was removed to Hindu Rao Hospital, where he remained hospitalised till 10.03.2008. The injuries sustained by the petitioner or having not healed, he is not able to do any work."*

3. With the consent of learned counsel for the parties, the above-captioned appeals have been heard together and are being disposed of by this common judgment.

4. To render the impugned Award, learned Motor Accident Claims Tribunal *(hereinafter referred to as "the Tribunal")* has relied upon evidence of injured and *Dr.Paramjit Singh* and as per evidence of this witness, injured had sustained 100% permanent disability in relation to whole body. On the strength of evidence recorded, impugned Award has been rendered. The breakup of compensation awarded by Tribunal is as under:-

Sl. No.	Compensation under various heads	Amount awarded
1.	Medical Treatment Expenses	Rs.10,783/-
2.	Loss of Earning Capacity	Rs. 9,06,797/-
3.	Attendant Charges	Rs. 50,000/-
4.	Purchase of Artificial Limb	Rs. 4,00,000/-
5.	Loss of Amenities in Life & Disfigurement	Rs. 2,00,000/-

6.	Pain and Suffering	Rs. 1,50,000/-
7.	Conveyance	Rs. 1,92,000/-
8.	Special Diet	Rs. 15,000/-
	Total	**Rs. 19,24,580/-**

5. Learned counsel for Insurer assails impugned Award on the ground that quantum of compensation granted is on the higher side and it needs to be suitably reduced. Learned counsel for Insurer submits that the conveyance charges of ₹1,92,000/- have been awarded by the Tribunal without any proof of conveyance expenses being incurred. It is next submitted that the quantum of compensation under the head of *'loss of earning capacity'* is also on the higher side. Thus, it is submitted that the quantum of compensation deserves to be reduced. Recovery rights are sought by Insurer's counsel on the ground that the driver of the truck in question was not having valid driving licence on the day of the accident. To submit so, attention of this Court is drawn to appellant's witness-R3W1, who has stated in his evidence that the driving licence of the driver of the insured vehicle has expired on 8th February, 2008 and the accident in question had taken place on 16th February, 2008. It is pointed out that as per the evidence of this witness, Notice under Order 12 Rule 8 of CPC was sent to driver and owner of the insured vehicle to produce the driving licence as well as the permit of the driver of the insured vehicle, but despite notice, neither the driving licence nor the permit was produced. Thus, recovery rights are claimed against the owner and driver of the insured vehicle.

6. On the contrary, learned counsel for Injured submits that the compensation granted by the Tribunal is inadequate and it needs to be

enhanced. Enhancement of compensation is sought on the ground that alongwith cross-objections, copy of the driving licence of the injured has been placed on record and so, minimum wages of a skilled workman should be the basis to assess the compensation. It is submitted by learned counsel for Injured that in light of additional evidence of *Anshul Sengar, Senior Associate, Otto Bock Healthcare India Pvt. Ltd.,* the cost of artificial limb is ₹5,24,000/- and its life is 5 to 6 years and the maintenance expenses are between ₹25,000/- to ₹30,000/- per year. So, it is submitted that the quantum of compensation granted to Injured needs to be suitably enhanced.

7. It is next submitted by learned counsel for Injured that in view of Constitution Bench decision of Supreme Court in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.,* (2017) 16 SCC 680, addition towards *'future prospects'* ought to be 40% and not 30% as awarded by the Tribunal. To submit so, reliance is placed upon Supreme Court's decision in *Mangla Ram v. The Oriental Insurance Co. Ltd. & Ors.,* (2018) 5 SCC 656. It is pointed out that the compensation granted under the head of *'pain and suffering'* also needs to be substantially enhanced. Lastly, it is submitted that the interest on the awarded amount ought to be 9% *per annum* and not 7.5% *per annum.*

8. On behalf of Owner of the Insured vehicle in question, it is submitted that the Tribunal has rightly declined recovery rights to Insurer in view of Proviso to Section 14 of *the Motor Vehicles Act, 1988*.

9. Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that the *'conveyance charges'* are

not only for the past, but are granted keeping in view the future needs also and the Tribunal has computed the *'conveyance charges'* while relying upon decision of a Co-ordinate Bench of this Court in *Harmohinder Singh v. Mangla Prasad & Ors.,* 2012 SCC OnLine Del 4426. As such, I find that the *'conveyance charges'* granted by the Tribunal are adequate and no case for its reduction is made out.

10. Compensation on account of *'loss of earning capacity'* has been granted by the Tribunal on minimum wages of an unskilled worker and addition of 30% towards *'future prospects'* has been made by the Tribunal to grant compensation of ₹9,06,797/- under this head. I find that the compensation granted under this head is not on higher side. Rather it is inadequate, as I find that copy of driving licence of Injured is on record and so, it cannot be said that the Injured is an unskilled person. Accordingly, while applying the minimum wages of a skilled worker, addition of 40% towards *'future prospects'* has to be made in view of Supreme Court's decision in *Mangla Ram (supra)*. Thus, *'loss of dependency'* is reassessed as under: -

₹4057/- per month + 40% X 12 X 16= ₹10,90,521/-

11. Regarding cost of artificial limb, I find that the Tribunal has relied upon decision of a co-ordinate Bench of this court in *Harmohinder Singh (supra)* to grant compensation under this head. The Injured in his appeal has led additional evidence of *Anshul Sengar* from *Otto Bock Healthcare India Pvt. Ltd.,* and as per this witness, the Injured was examined by a Prosthetist and Orthotist and his evidence remained unchallenged.

12. In view afore-referred unrebutted additional evidence, the cost of artificial limbs is ₹5,24,000/- and its life is 5 to 6 years and thereafter, new prosthesis has to be purchased and the annual maintenance expenditure of the artificial limbs is between ₹25,000/- to ₹30,000/- per year. The Injured was 35 years in the year 2012. While taking the life expectancy to be 66 years, it is reasonable to assume that the replacement of artificial limbs is likely to take place 4 or 5 times during the life-time of Injured. In the face of aforesaid additional evidence on record, a sum of ₹26 lacs is granted to enable the Injured to obtain artificial limbs with periodical replacements and a sum of ₹1,80,000/- is also granted to Injured to meet the annual maintenance expenditure of the artificial limbs. In the first instance, Insurer shall directly release a sum of ₹5.24 lacs for obtaining artificial limbs and ₹1,80,000/- *(Rs.30,000/- per year X 6 years)* to meet the annual maintenance expenditure of the artificial limbs to *Otto Bock Healthcare India Pvt. Ltd.* upon Injured furnishing the requisite documents. Likewise, for obtaining new prosthesis periodically, if advised by doctors in future, ₹5.24 lacs with ₹1,80,000/- towards annual maintenance expenditure of the artificial limbs be directly released to *Otto Bock Healthcare India Pvt. Ltd.* or the Hospital/Agency from where the artificial limbs are procured, subject to Injured furnishing the requisite documents.

13. So far as grant of recovery rights to Insurer are concerned, I find that the driving licence of the driver of insured vehicle had expired on 8th February, 2008 and the accident in question had taken place on 16th February, 2008. As per Proviso to Section 14 of *the Motor Vehicles Act,*

1988, even after the expiry of the driving licence, it would remain effective for a period of 30 days from such expiry. The purport of this Proviso is to enable such drivers to get it renewed within 30 days. So, recovery rights cannot be granted to Insurer as the accident in question had taken place during the period of 30 days after the expiry of the driving licence in question. Compensation of ₹1.5 lacs granted by the Tribunal under the head of *'pain and suffering'* appears to be justified in the facts and circumstances of this case and is thus maintained. The Tribunal has granted ₹50,000/- towards *'attendant charges',* which are not required to be interfered with, as adequate cost for obtaining of artificial limbs is being awarded to Injured. The compensation granted under other heads is found to be justified and is thus maintained.

14. As far as interest granted by the Tribunal is concerned, I find that 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, appellant is also entitled to interest @ 9% *per annum.*

15. In view of aforesaid, the compensation payable to Injured is reassessed as under: -

Sl. No.	Compensation under various heads	Amount awarded
1.	Medical Treatment Expenses	₹10,783/-
2.	Loss of Earning Capacity	₹ 10,90,521/-
3.	Attendant Charges	₹ 50,000/-
4.	Cost of Artificial Limb and annual maintenance expenditure	₹5,24,000/- + ₹1,80,000/- = ₹ 7,04,000/-
5.	Loss of Amenities in Life &	₹ 2,00,000/-

	Disfigurement	
6.	Pain and Suffering	₹ 1,50,000/-
7.	Conveyance	₹ 1,92,000/-
8.	Special Diet	₹ 15,000/-
	Total	**₹ 24,12,304/-**

16. Consequentially, the compensation awarded is enhanced from ₹19,24,580/- to ₹24,12,304/-. The enhanced compensation be deposited by Insurer with the Tribunal within four weeks from today. The re-assessed compensation shall carry interest @ 9% *per annum* and it be disbursed as per this judgment in the ratio and manner as indicated in the impugned Award. Statutory deposit, if any, be refunded to Insurer.

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

(SUNIL GAUR)
JUDGE

JULY 10, 2018
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