* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: July 11, 2018

\+ **MAC. APP. 143/2013**

UNITED INDIA INSURANCE CO LTD .....Appellant

Through: Mr. Sameer Nandwani, Advocate

Versus

BRIJK KISHORE MISHRA .....Respondent

Through: Mr. S.N. Prashar, Advocate

\+ **MAC. APP. 281/2016**

BRIJ KISHORE MISHRA .....Appellant

Through: Mr. S.N. Prashar, Advocate

Versus

JAI PRAKASH SHUKLA AND ORS (UNITED INDIA INS CO. LTD.) .....Respondents

Through: Mr. Sameer Nandwani, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 5th December, 2012 grants compensation of ₹6,32,312/- with interest @7.5% per annum to injured- *Brij Kishore* aged 25 years, on account of grievous injury suffered by him in a vehicular accident, which took place on 25th June, 2008.

2. In the above captioned first appeal, Insurer seeks recovery rights against owner 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 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.

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

> *"The claimant was traveling as a helper in delivery van bearing registration no. DL-1LJ-5311 being driven by its driver namely Jai Prakash Shukla in rash and negligent manner and when the aforesaid vehicle reached at Raj Nagar Flyover near CNG pump, Sarojini Nagar, the delivery van hit the railing of flyover as a result of which the delivery van turned turtle, resultantly causing grievous injuries to victim. He was removed to AIIMS for treatment thereafter, an FIR 257/2008 was registered against driver of delivery van with police station Sarojini Nagar, Delhi."*

4. To render the impugned Award, Motor Accident Claims Tribunal *(hereinafter referred to as the "Tribunal")* has relied upon evidence of injured and as per Disability Certificate of 17th November, 2009, issued by the Office of Chief Medical Officer, Basti, the injured had suffered permanent disability of 60% of right lower limb. On the strength of evidence recorded, impugned Award has been rendered. The breakup of compensation awarded by Tribunal is as under:-

Loss of future earnings	₹4,49,280/-
Medical expenses	₹ 23,032/-
Loss of income	₹ 20,000/-
Travelling expenses, special diet and other miscellaneous expenses	₹ 40,000/-
Pain and suffering	₹ 50,000/-
Damages as to enjoyment of life and disfigurement	₹ 50,000
Total	₹ 6,32,312/-

5. Learned counsel for Insurer assails impugned Award on the ground that recovery rights have been wrongly denied to appellant despite Report of 23rd February, 2011 of the concerned Licensing Authority regarding driving license in question being not issued by the said Licensing Authority. Counsel for Insurer submits that there are two contradictory reports regarding issuance of driving license by the Licensing Authority concerned and so, in such a situation, the Tribunal ought to have summoned a witness from the concerned Licensing Authority to find out which of the two reports issued by the same Licensing Authority is correct. It is submitted by Insurer's counsel that despite service, owner of the vehicle in question has not come forward to contest against the grant of recovery rights and in view of Report of 23rd February, 2011 of the concerned Licensing Authority, recovery rights ought to be granted to Insurer.

6. On the other hand, learned counsel for injured seeks enhancement in quantum of compensation granted by submitting that the functional disability ought to be considered as per the Disability Certificate, as the

injured is confined to bed. It is submitted by counsel for injured that in light 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. It is further submitted by counsel for injured that the compensation granted under the *non-pecuniary heads*, is wholly inadequate, as the injured had suffered permanent disability of 60% of right lower limb. Lastly, it is submitted that the interest on the awarded amount ought to be 9% *per annum* and not 7.5% *per annum.* Thus, enhancement of compensation is sought by injured.

7. Upon hearing and on perusal of impugned Award and the evidence on record, I find that the report of 23rd February, 2011 issued by the Licensing Authority regarding the driving license in question, is not duly proved on record, as it does not bear any exhibit number, whereas the subsequent report of 15th February, 2012 issued by the same licensing authority is duly exhibited as Ex.RW1/3 by the witness and as per this report, driving license in question has been issued by this very same Licensing Authority. So, it is deemed appropriate to rely upon the duly exhibited report of 15th February, 2012 *(Ex.RW1/3)* and hence, no reliance can be placed on the report of 23rd February, 2011, which is not exhibited in evidence. In the face of duly exhibited report of 15th February, 2012 *(Ex.RW1/3)*, I find that no case for grant of recovery rights to the insurer is made out.

8. As regards enhancement of compensation is concerned, I find that the *'functional disability'* cannot be equated with the '*permanent disability'* of 60% of the right lower limb of the injured. In the considered

opinion of this Court, the injured in his evidence has not highlighted as to what difficulty he is facing in life due to the permanent disability suffered by him and so, the Tribunal has rightly assessed his *'functional disability'* to be 40%. Injured was working as a Helper in a delivery van and his income has been assessed by the Tribunal at ₹4,000/- per month and addition of 30% towards future prospects has been made. The age of injured at the time of accident was 25 years and in the light of Constitution Bench decision of Supreme Court in *Pranay Sethi (Supra)*, addition of 40% instead of 30% towards future prospects is to be made. Accordingly, the *"loss of future earning capacity"* of injured is reassessed as under:-

₹4,000/- X 12 X 18 X 140/100 X 40/100 = ₹4,83,840/-

9. The compensation payable to Injured as reassessed as under: -

Loss of future earnings	₹4,83,840/-
Medical expenses	₹ 23,032/-
Loss of income	₹ 20,000/-
Travelling expenses, special diet and other miscellaneous expenses	₹ 40,000/-
Pain and suffering	₹ 50,000/-
Damages as to enjoyment of life and disfigurement	₹ 50,000
Total	₹ 6,66,872/-

10. Consequentially, the compensation amount payable stands enhanced from ₹6,32,312/- to ₹6,66,872/-. The enhanced compensation be deposited by Insurer with the Tribunal within four 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 in the ratio and manner as indicated in the impugned Award. Statutory deposit, if any, be refunded to Insurer.

11. With aforesaid directions, the above captioned first appeal i.e. MAC.App.143/2013 is dismissed, whereas the above captioned second appeal MAC.App. 281/2016 is allowed in abovesaid terms.

12. The above captioned two appeals are accordingly disposed of.

(SUNIL GAUR)
JUDGE

JULY 11, 2018
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