

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

Date of Decision: July 19, 2018

+ **MAC.APP. 176/2013**

RELIANCE GENERAL INSURANCE CO. LTD. Appellant
Through: Mr. Shoumik Mazumdar, Advocate

Versus

VINOD KUMAR AND ANR. Respondents
Through: Ms. Shubhra Parashar, Advocate
for R-1.

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 18th September, 2012 grants compensation of ₹10,24,619/- with interest @ 9% per annum to respondent-injured-Vinod Kumar, aged 21 years, on account of grievous injury suffered by him in a vehicular accident, which took place on 6th June, 2007. The facts as noticed in the impugned Award are as under:-

“On the fateful day of 6.6.2007 at about 10.00 AM when the petitioner was going on his motorcycle bearing No. DL 4SBG 3198 to Kanjhwa and when he reached near Chandpur More a Honda City car bearing No. DL 4CAB 7367 came from the wrong side in a very fast speed in such a manner that the petitioner did not had time to save himself and hit the motorcycle due to which the petitioner sustained serious injuries on his head besides other bodily injuries. He was removed to Maharishi Balmiki Hospital, Pooth Khurd,

Delhi by the driver of the offending car. The said car was driven by the respondent No. 1 was also the owner of same. The case was registered in respect of this accident vide FIR No. 102/07 PS Kanjhawala U/s 279/337 IPC and later on Section 338 IPC was also added to the same.”

2. 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 (*Exhibit PW1/A2*), injured had sustained permanent disability of 30% in relation to left eye. 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 ₹)
Loss of future income	₹8,83,159.2 (rounded off to ₹8,83,160/-)
Pain & Suffering, mental shock and trauma	₹ 1,00,000/-
Special Diet expenses	₹ 20,000/-
Conveyance charges	₹ 20,000/-
Medical Expenses	₹ 1,459/-
Total	₹ 10,24,619/-

3. Learned counsel for appellant-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 appellant-Insurer submits that the Tribunal has erroneously assessed functional disability as 70% although permanent disability as per disability certificate is 30%.

Learned counsel for appellant-Insurer submits that functional disability ought to be assessed at 20%. It is submitted that in view of Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680, addition towards future prospects has to be 40% and not 50% as awarded by the Tribunal. It is also submitted by learned counsel for appellant-Insurer that compensation granted under the head of '*pain and suffering*' is on higher side and it needs to be suitably reduced.

4. On the contrary, learned counsel for respondent-Injured supports the impugned Award and maintains that the compensation granted is just and proper.

5. Upon hearing and on perusal of impugned Award and the evidence on record, I find that disability certificate (*Exhibit PW1/A2*) does take note of left optic neuropath post traumatic suffered by injured and thereafter, opines that the permanent disability in relation to the left eye is 30%. The Tribunal while taking note of optic neuropath post traumatic aspect was justified in assessing functional disability to be more than 30%. In the face of aforesaid disability certificate and evidence of injured, it is deemed appropriate to assess functional disability suffered by injured to be 50% as injured was a driver by profession. In view of Supreme Court's decision in *Pranay Sethi (supra)*, addition towards future prospects has to be 40% and not 50% as awarded by the Tribunal.

6. In view of above, compensation under the head of '*loss of dependency*' is re-assessed as under :-

$$₹3,894/- \times 12 \times 18 \times 50/100 \times 140/100 = ₹5,88,772/-$$

7. The compensation granted to the injured under the ‘*non-pecuniary heads*’ appears to be justified in the facts of instant case. Accordingly, the compensation payable to the respondent-Injured is reassessed as under: -

Heads of Compensation	Amount (in ₹)
Loss of earning capacity	₹ 5,88,772/-
Pain & Suffering	₹ 1,00,000/-
Special Diet	₹ 20,000/-
Conveyance	₹ 20,000/-
Medical Expenses	₹ 1,459/-
Total	₹ 7,30,231/-

8. Consequentially, the compensation amount payable stands reduced from ₹10,24,619/- to ₹7,30,231/-. 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 along with excess deposit be refunded to Insurer.

9. With aforesaid directions, this appeal is disposed of.

(SUNIL GAUR)
JUDGE

JULY 19, 2018
SRwt