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

Date of Decision: August 23, 2018

\+ **MAC.APP. 202/2013**

RAJESH YADAV ..... Appellant

Through: Mr. Navneet Goyal, Advocate

Versus

RAJU LAMA AND ORS. .....Respondents

Through: Mr. Sunil K. Kalra and Mr. Ajay Bidhuri, Advocates for respondents No.2

Mr. Sameer Nandwani, Advocate for respondent-Insurer

\+ **MAC.APP. 132/2014**

BIJENDER ..... Appellant

Through: Mr. Sunil K. Kalra and Mr. Ajay Bidhuri, Advocates

Versus

M/S SHRIRAM GENERAL INSURANCE COMPANY LTD. .....Respondent

Through: Mr. Sameer Nandwani, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 23rd November, 2012 grants compensation of ₹2,94,728/- with interest @ 7.5% *per annum* to *Rajesh*-a fireman, aged 37 years *(hereinafter referred to as 'the Injured')* on account of grievous

injuries suffered by him in a vehicular accident, which took place on 12th May, 2011.

2. In the above-captioned first appeal, enhancement of compensation is sought by the Injured whereas in the above-captioned second appeal, *Bijender,* owner of the insured vehicle *(hereinafter referred to as 'the Owner'),* seeks setting aside of recovery rights granted by the Tribunal to Insurer of the insured vehicle in question. Since both the appeals arise out of common impugned Award, therefore, with the consent of learned counsel for the parties, these 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:-

> *"Brief facts as epitomized in the petition are that on the date of accident at about 01:30 a.m., the victim met with an accident in front of farm house opposite Rajokari Air Force Station, Delhi when his two wheeler scooter bearing registration no. DL-8SQ-6714 was hit by a goods vehicle bearing no. DL-LG-2529 being driven by its driver in a rash and negligent manner. He was removed to hospital and an FIR no.118 dated 12.05.2011 was registered u/s 279/337 IPC with police station Vasant Kunj, New Delhi for this accident."*

4. To render the impugned Award, Motor Accident Claims Tribunal *(hereinafter referred to as 'the Tribunal')* has relied upon evidence of the Injured and other evidence on record. The breakup of compensation awarded by the Tribunal is as under:-

Loss of allowances/leave	*₹2,10,280/-*

Medical expenses	*₹39,448/-*
Conveyance, special diet and other incidental charges	*₹20,000/-*
Pain and suffering	*₹25,000/-*
Total	***₹2,94,728/-***

5. During the pendency of the above-captioned appeals, the court had permitted the Injured to lead additional evidence while granting opportunity to the opposite side to lead additional evidence in rebuttal. In the additional evidence led, the Injured has deposed as AW-1 regarding further medical treatment taken by him. In rebuttal, the Owner has led evidence as R2W1 regarding the exercise of due diligence in employing the driver, who was driving the insured vehicle on the day of the accident.

6. Learned counsel for the Owner assails impugned Award on the ground that recovery rights have been wrongly granted by the Tribunal to the Insurer. It is submitted by Owner's counsel that the owner had exercised due diligence in employing the driver on the insured vehicle and places reliance upon Supreme Court's decision in *United India Insurance Co. Ltd. V. Lehru,* (2003) 3 SCC 338 to submit that the liability to pay the awarded compensation is of the Insurer and not of the Owner of the insured vehicle.

7. On the other hand, learned counsel for the Injured seeks enhancement in the quantum of compensation granted by the Tribunal by submitting that the compensation granted by the Tribunal under the *'non-pecuniary heads'* is wholly inadequate. Reliance is placed upon additional evidence led by the Injured, to submit that after passing of the impugned Award, the Injured had remained under treatment for 28 days

and for this period, leave was availed by him and so, under the head of *'loss of leave',* compensation of ₹22,531/-, i.e., one month's salary, ought to be paid to him. Thus, it is submitted that the quantum of compensation granted by the Tribunal needs to be suitably enhanced.

8. On the contrary, learned counsel for Insurer supports the impugned Award and submits that the compensation granted by the Tribunal is justified and no case for its enhancement is made out.

9. Upon hearing and on perusal of impugned Award, the evidence as well as additional evidence on record and the decision cited, I find that in view of additional evidence led by the Injured, he is entitled to a sum of ₹22,531/-, i.e., his one month's salary, under the head of *'loss of leave'* and is ordered accordingly.

10. As regards compensation granted under the *'non-pecuniary heads'*, I find that due to injuries suffered by the Injured in this accident, he had to remain under treatment for nearly 10 months and so, compensation granted by the Tribunal under the head of *'pain and suffering'* needs to be enhanced from ₹25,000/- to ₹50,000/- and is enhanced as such. Even the *'conveyance, special diet and other incidental charges'* granted by the Tribunal appear to be on lower side and therefore, the composite compensation of ₹20,000/- granted by the Tribunal under this head is enhanced to ₹40,000/-.

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

Loss of allowances/leave	₹2,10,280/-
Medical expenses	₹ 39,448/-
Loss of leave for 28 days	₹ 22,531/-

Conveyance, special diet and other incidental charges	₹ 40,000/-
Pain and suffering	₹ 50,000/-
Total	**₹ 3,62,259/-**

12. So far as the liability aspect is concerned, strictly speaking, in rebuttal, the Owner could not have led evidence regarding due diligence aspect. However, the additional evidence led by the Owner cannot be altogether ignored as, to determine the liability, the aspect of due diligence has to be considered. In the additional evidence led by the Owner, it is categorically asserted that before employing the driver on the insured vehicle, he had checked his driving licence and had employed him after the driving licence of the said driver had appeared to be genuine. It is also the case of the Owner that the driving skills of the said driver was also tested by the Owner.

13. On the due diligence aspect, pertinent observation of Supreme Court in *Pepsu RTC v. National Insurance Co.,* (2013) 10 SCC 217 are as under: -

> *"……a two-Judge Bench of this Court has taken the view that the Insurance Company cannot be permitted to avoid its liability only on the ground that the person driving the vehicle at the time of accident was not duly licensed. It was further held that the wilful breach of the conditions of the policy should be established. Still further it was held that it was not expected of the employer to verify the genuineness of a driving licence from the issuing authority at the time of employment. The employer needs to only test the capacity of the driver and if after such test, he has been appointed, there cannot be any liability on the employer.*

The situation would be different when the employer was told that the driving licence of its employee is fake or false and yet the employer was not taking appropriate action to get the same duly verified from the issuing authority."

14. In light of aforenoted settled legal position and the evidence on record, the recovery rights granted by the Tribunal to Insurer are hereby set aside and the liability is put on the Insurer to pay the reassessed compensation.

15. So far as interest granted by the Tribunal on the awarded compensation 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, the Injured is also entitled to interest @ 9% *per annum* instead of 7.5% *per annum*.

16. Consequentially, the compensation amount payable stands enhanced from ₹2,94,728/- to ₹3,62,259/-, which shall carry interest @ 9% *per annum*. The enhanced compensation be deposited by Insurer with the Tribunal within six weeks from today. Thereafter, the reassessed compensation be transmitted directly into the bank account of the Injured forthwith.

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

(SUNIL GAUR)
JUDGE

AUGUST 23, 2018
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