

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

Date of Decision: July 23, 2018

+ **MAC.APP. 231/2013**

NATIONAL INSURANCE CO. LTD. Appellant

Through: **Mr. Pankaj Seth, Advocate**

Versus

RAVI MAKHIJA & ANR. Respondents

Through: **Mr. Ravi Makhija &
Ms. Monika Yadav, Advocates**

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 3rd December, 2012 grants compensation of ₹17,63,069/- with interest @ 7.5% per annum to respondent/Injured-Ravi, aged 36 years, on account of grievous injury suffered by him in a vehicular accident, which took place on 14th November, 2009. The facts as noticed in the impugned Award are as under:-

“Brief facts of the case are that on 14.11.2009 Sh. Ravi Makhija (hereinafter referred to as petitioner) was proceeding via Maitri College towards Ring Road by driving his car bearing no.DL-2CAD-8393 at a normal speed by observing the traffic rules and norms. At about 2.15 PM on that day when he reached near St. Martin Marg, Paryavaran Park then all of a sudden a car bearing no. KL-7Y-6049 (hereinafter refer as offending vehicle) being driven and owned by the respondent no.1 (in short R1) in rash and negligent manner in the contravention of the traffic rules and

norms and hit his car front side after coming wrong side. Due to the forceful impact of the hit, the petitioner sustained grievous injuries on his body. He was removed from the place of accident to RML Hospital where his MLC bearing no. 171492/09 was prepared.”

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 (*Ex. PW6/A*), Injured had suffered 7% injuries in relation to 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 medicine and treatment	₹2,55,633/-
Loss of Income on account of leaves	₹9,66,579/-
For loss on account of permanent disability	₹4,30,857/-
Pain and Suffering	₹50,000/-
Conveyance & Special diet	₹30,000/-
Loss of amenities	₹30,000/-
Total	₹17,63,069/-

3. Learned counsel for appellant-*Insurer* assails the impugned Award on the ground of lack of negligence of the driver of Insured vehicle, and submits that quantum of compensation granted is on the higher side and it needs to be suitably reduced. It is submitted that appellant is the Insurer of Car No. KL-7Y-6049 and the finding regarding the negligence is perverse, as the Tribunal has not adverted to the evidence on record. It is next submitted by counsel for Insurer that the Injured has not remained on

leave for 425 days and therefore, the Tribunal has erred in granting compensation of ₹9,66,579/-. To submit so, attention of this Court is drawn to the evidence of *Awanish Kumar (PW-3)*, Finance Manager of Injured's employer company, who in his evidence has not stated that for the leave period, no salary was disbursed to the injured and therefore, it is submitted that no case for grant of compensation on account of "*loss of income on account of leave*" is made out.

4. Counsel for Insurer further submits that exorbitant compensation of ₹4,30,857/- has been granted by the Tribunal on account of *permanent disability*, which is 7% only and since the injured is in employment and so, no compensation under this head is payable to the Injured. Thus, setting aside of impugned Award is sought by appellant-*Insurer*.

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

6. Upon hearing and on perusal of impugned Award and the evidence on record, I find that evidence of the Injured on the negligence aspect has not been challenged. Otherwise also, negligence of driver of the insured vehicle is apparent on the face of record. As regards compensation granted on account of leave of 425 days, I find that there is no basis for the Tribunal to conclude that no increments were granted for the leave period or that it has resulted in denial of promotion to Injured. It is evident from the evidence of the witness (*PW-3*) from the office of employer that leave period of the Injured was about one year and the pay package of Injured was around ₹13,00,000/- only, and so, compensation of ₹9,66,579/- granted under the head of "*loss of income due to leaves*" is

modified and Injured is granted compensation of ₹8,30,000/- under the aforesaid head.

7. As per Disability Certificate (EX. PW6/A), “*permanent disability*” suffered by injured is 7% in relation to right lower limb and the Tribunal has taken the “*functional disability*” as 50% of 7% i.e. 3.5%, which appears to be justified in the facts of instant case. The compensation amount of ₹4,30,857/- granted by the Tribunal under the head of “*loss on account of permanent disability*”, is justified in view of the evidence on record. I find no justification to vary the quantum of compensation granted to Injured under this head. The compensation granted to Injured under the *non-pecuniary heads* is found to be just and reasonable.

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

Loss of medicine and treatment	₹2,55,633/-
Loss of Income on account of leaves	₹8,30,000/-
For loss on account of permanent disability	₹4,30,857/-
Pain and Suffering	₹50,000/-
Conveyance & Special diet	₹30,000/-
Loss of amenities	₹30,000/-
Total	₹16,26,490/-

9. Consequentially, the compensation amount payable stands reduced from ₹17,63,069/- to ₹16,26,490/-. As far as interest on the compensation granted by the Tribunal is concerned, I find that it needs to be brought in tune with Supreme Court’s Three Judge Bench decision in

Jagdish v. Mohan and Others, (2018) 4 SCC 571, wherein interest @ 9% *per annum* has been granted on the awarded compensation and so, in the instant case, it is directed that the re-assessed compensation shall carry interest @ 9% *per annum*. Such a course has been adopted because Supreme Court in *Reshma Kumari & Ors. v. Madan Mohan & Anr.*, (2013) 9 SCC 65 has reiterated that it is the obligation of the Court to ensure that the compensation granted is just, fair and proper. The modified compensation alongwith interest @ 9% p.a. be released forthwith to the Injured. Statutory deposit alongwith excess deposit, if any, be refunded to appellant-*Insurer*.

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

(SUNIL GAUR)
JUDGE

JULY 23, 2018

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