

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

Date of Decision: July 13, 2018

+ **MAC.APP. 165/2017**

SHRI RAM GENERAL INSURANCE CO LTD. Appellant

Through: Mohd. Mustafa, Advocate

Versus

RAJESH KUMAR Respondent

Through: Mr. Anshuman Bal, Advocate

+ **MAC.APP. 1045/2017**

RAJESH KUMAR Appellant

Through: Mr. Anshuman Bal, Advocate

Versus

SHRI RAM GENERAL INSURANCE CO LTD &
ORS. ..Respondents

Through: Mohd. Mustafa, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

C.M. 6727/2017 (u/S 151 CPC) in MAC.APP. 165/2017

Allowed subject to all just exceptions.

C.M. 6728 /2017 (u/S 151 CPC) in MAC.APP. 165/2017

There is delay of five days in filing the accompanying appeal.

Upon hearing, I find that averments made in this application provide sufficient cause to condone the delay occasioned. Application is allowed and delay is condoned.

The application is disposed of.

MAC.APP. 165/2017

MAC.APP. 1045/2017

1. Impugned Award of 11th November, 2016 grants compensation of ₹17,18,000/- with interest @ 12% *per annum* to Injured- *Rajesh Kumar*, aged 42 years, on account of grievous injury suffered by him in a vehicular accident, which took place on 5th January, 2014.

2. In the above captioned first appeal, Insurer seeks exoneration and in the alternative apportionment of compensation awarded, whereas in the above captioned second appeal, enhancement of compensation is sought by Injured. Since both the appeals arise out of common impugned Award, 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 facts as noticed in the impugned Award are as under:-

“The requisite facts to be exposited for adjudication are that on 05.01.2011 at about 9:40 AM, the petitioner Rajesh Kumar was going on his motorcycle alongwith his daughter Naina and son Vishal @ Badal as pillion riders. As they reached on Delhi Hapur Road, Hapur in front of Tata Telco Company, they were hit by a Truck bearing registration No. HR-55Q-7692 (hereinafter referred to as the offending vehicle) from front side being driven by the respondent no.1 at a high speed and negligent manner. All

the petitioners sustained grievous injuries and were taken to Khan Nursing Home, Hapur, U.P. for treatment. However, during treatment minor Naina and Vishal @ Badal succumbed to their injuries. A case FIR No. 4/14, under Section 279/338/304 A of IPC was registered at police station Kotwali, Hapur against the Respondent no.1.”

4. To render the impugned Award, learned Motor Accident Claims Tribunal (*hereinafter referred to as the “Tribunal”*) has relied upon evidence of injured- *Rajesh (PW-1)*; Dr. Anup Kumar (*PW-2*) and Dr. Brijesh Kumar Jain (*PW-3*) and as per evidence of these witnesses, Injured- *Rajesh Kumar* had sustained 84% permanent disability of both lower limbs and the functional disability suffered by Injured is 80%. On the strength of evidence recorded, impugned Award has been rendered. The breakup of compensation awarded by Tribunal is as under:-

Towards pain and sufferings	₹1,00,000/-
Towards servant/ attendant charges	₹30,000/-
Loss of amenities and enjoyment of life	₹60,000/-
Towards conveyance and special diet	₹40,000/-
Towards medical bills	₹1,26,000/-
Towards future loss of income	₹10,86,759/-
Towards loss of wages	₹2,74,924/-
Total	₹17,17,683/-

5. Learned counsel for appellant-Insurer assails the impugned Award on the ground that the accident in question took place due to contributory

negligence of Injured- *Rajesh Kumar*, who was driving the motor cycle without wearing a helmet. It is submitted by counsel for Insurer that Injured- *Rajesh Kumar* was not holding a valid driving license and had permitted two pillion riders on the motor cycle and thereby, violated the provisions of *Motor Vehicles Act, 1988*. Learned counsel for Insurer submits that accident in question was result of a head on collision and this accident had occurred during day time and so, negligence of Injured- *Rajesh Kumar* was to the extent of 50%. Learned counsel for Insurer submits that “*functional disability*” assessed as 80% by the Tribunal is on higher side and it ought to be 50%. It is also submitted by counsel for Insurer that the interest of 12% *per annum* awarded is on the higher side and it be reduced to 9% *per annum*.

6. On the other hand, learned counsel for Injured- *Rajesh Kumar* refutes the submissions advanced on behalf of Insurer and submits that it is not the case of contributory negligence. It is submitted that the plea of contributory negligence has been already negated in connected appeals MAC.APP. 160/2017 & MAC.APP.167/2017, which arose out of the accident in question. Regarding the quantum of compensation, it is submitted by counsel for Injured- *Rajesh Kumar* that the compensation granted by the Tribunal is inadequate and it needs to be suitably enhanced. Attention of this Court has been drawn to the evidence of Injured- *Rajesh Kumar (PW-1)* to point out that his testimony regarding the offending truck being driven on the wrong side, remains unrebutted and so, the plea of contributory negligence deserves to be negated.

7. Regarding “*functional disability*”, the submission of counsel for Injured is that prior to the accident in question, Injured- *Rajesh Kumar* was working as *Safai Karamchari* and now he is on wheel chair and is unable to earn his livelihood and so, “*functional disability*” is infact 100%. Addition towards “*future prospects*” is claimed by counsel for Injured while relying upon Supreme Court’s decision in *Anita & Ors. Vs. Arun Yadav & Ors.* 2017 SCC OnLine SC 1139. It is further submitted by counsel for Injured that compensation granted under the heads “*pain and sufferings*” and “*loss of amenities and enjoyment of life*” needs to be substantially enhanced, as the “*functional disability*” of the injured is on the higher side. Reliance is also placed upon Supreme Court’s decisions in *Jagdish Vs. Mohan & ors.* (2018) 4 SCC 571; *Ankur Kapoor Vs. Oriental Insurance Company Limited* (2018) 1 SCC 136 and *Afnees (unconscious) rep through Mother Vs. Oriental Insurance Company Ltd. & Ors.* 2017 ACJ 2622 to seek enhancement of compensation awarded.

8. Upon hearing and on perusal of impugned Award, evidence on record, site plan of the spot of accident in question and the decisions cited, I find that by no stretch of imagination, it can be said that it is a case of contributory negligence. It is quite clear from the site plan of the spot, that the accident in question took place due to rash and negligent driving of driver of offending truck in question. Regarding Injured not possessing the driving license and having two pillion riders on his motor cycle, I find that there is no cross-examination of the Injured on this aspect and so, impugned Award cannot be faulted with on the aforesaid aspect of contributory negligence. In the face of Disability Certificate

(Ex. PW3/1) and evidence of Dr. Anup Kumar (PW-2) and Dr. Brijesh Kumar (PW-3), I find that due to the injuries sustained by the Injured in this accident, he is on wheel chair but it cannot be said that the “functional disability” of the Injured is 100%. In the considered opinion of this Court, in view of the evidence on record, 80% “functional disability” has been rightly assessed by the Tribunal.

9. As regards compensation granted under the head of “pain and sufferings”, “loss of amenities and enjoyment of life”, I find that the Tribunal has granted compensation of ₹1,00,000/- and ₹60,000/- respectively under these two heads. So far as “attendant charges” are concerned, a sum of ₹30,000/- awarded under this head is justified, as the evidence to claim “attendant charges” is scanty.

10. During the course of hearing, learned counsel for Injured had drawn attention of this Court to Supreme Court’s decision in *Afnees (Supra)* to submit that compensation of ₹5,00,000/- under the head of “loss of amenities of life” has been granted. Reliance placed upon decision in *Afnees (Supra)*, is of no avail as the Injured in the said decision was 19 years of age and was reduced to vegetative state due to the accident. Reliance placed upon Supreme Court’s decision in *Jagdish (Supra)* is of no assistance to the case of Injured, as in the said decision, injured was 24 years of age and so, composite compensation of ₹2,00,000/- under the head “loss of amenities of life” was granted, whereas in the instant case, Injured –*Rajesh Kumar* is of 42 years of age. Supreme Court’s decision in *Ankur Kapoor (Supra)*, is also of no help to the case of Injured as in this decision, compensation of ₹3,00,000/- each

under the head of “*loss of amenities of life and future prospects*” and “*pain and suffering*” was granted because the Injured was a Trainee in a Merchant Navy Company and was unmarried boy of 22 years of age, whereas in the case in hand, Injured was a *Safai Karamchari*, and is married. In view of aforesaid, I am of the considered opinion that the compensation awarded by the Tribunal under the head “*pain and suffering*” and “*loss of amenities and enjoyment of life*” is just and fair and no case for enhancement of compensation under these two heads is made out. 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, Injured is also entitled to interest @ 9% *per annum*.

11. In view of aforesaid, while modifying the rate of interest payable on the awarded compensation, impugned Award is upheld. Registry is directed to forthwith release the awarded compensation to Injured in the manner and ratio as indicated in the impugned Award. Statutory deposit, if any, be refunded to appellant.

12. Both the appeals are accordingly disposed of.

(SUNIL GAUR)
JUDGE

JULY 13, 2018

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