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

Date of Decision: September 6, 2018

\+ **MAC.APP. 182/2017 and CM Nos. 7697/2017, 21823/2018**

SHRIRAM GENERAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. Pankaj Singh Thakur, Advocate for Mr. Sameer Nandwani, Advocate

Versus

MAHESH & ORS ..... Respondents
Through: Mr. Varun Sarin, Advocate

\+ **MAC.APP. 183/2017 and CM Nos. 7699/2017, 21847/2018**

SHRIRAM GENERAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. Pankaj Singh Thakur, Advocate for Mr. Sameer Nandwani, Advocate

Versus

MOFID KHAN & ORS ..... Respondents
Through: Mr. Varun Sarin, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned two appeals relate to a vehicular accident which took place on 1st July, 2014 in which a DTC driver – *Mahesh* and a student - *Mofid Khan* were injured. Vide common

impugned Award of 24th December, 2016, compensation has been granted to the respondents-Injured by the Tribunal. With the consent of learned counsel for the parties, the above captioned two appeals have been heard together and are being decided together by this common judgment.

2. In the above captioned first appeal, the challenge is to impugned Award vide which compensation of ₹23,21,100/- with interest @8% p.a. has been granted to respondent/Injured - *Mahesh*, aged 38 years on account of grievous injuries sustained by him in this vehicular accident. In the above captioned second appeal, the impugned Award which grants compensation of ₹4,49,100/- with interest @ 8% p.a. to respondent/Injured- *Mofid Khan*, aged 12 years on account of the injuries suffered by him in this vehicular accident is under challenge.

3. The factual background giving rise to these appeals, as noticed in the impugned Awards, is as under :-

> *"Insurance company in its reply has stated that as per rukka which is recorded on the basis of statement of one injured Mahesh who happened to be the driver of the involved vehicle DTC bearing no. DL 1P C 7117, the alleged accident had taken place on 01.07.2014 at about 9.30 PM nearly Asthal temple when the alleged offending truck bearing no. HR 38 Q 8796 came from the front and hit a TSR bearing no. DL 1L Q 9468 which was moving ahead to the DTC bus. In that course the driver of the DTC bus also took a sharp left turn and the said truck also hit the DTC bus from the front side. It is further stated that as per charge sheet, after receiving DD entry 34A dated 01.07.14 ASI alongwith Ct. Ashok reached on the spot where they*

found DTC bus bearing no. DL 1P C 7117, Champion TSR no. 9468 and one Dumper truck no. HR 38 Q 3796 in accidental condition. It is further stated that as per site plan, it is head on collision and that too on the middle of the road. It is further stated that the impact occurred between the alleged offending vehicle and TSR no. DL 1L Q 9468 first and then to the DTC bus DL 1P C 7117 and dumper no. HR 38 Q 8796. It however, admitted that the alleged offending vehicle was insured with it vide policy no. 10003/31/14/651371 till 21.01.2015."

4. To render the impugned Award, learned Motor Accident Claims Tribunal *(hereinafter referred to as the "Tribunal")* has relied upon evidence of injured and the other evidence on record**.** On the strength of evidence recorded, impugned Award has been rendered. The breakup of compensation awarded by Tribunal to Injured-*Mahesh* is as under:-

Medical Expenses	*₹12,100/-*
Pain & Suffering & Enjoyment of life	*₹1,50,000/-*
Special Diet, Conveyance & Attendant	*₹66,000/-*
Loss of income during treatment	*₹1,73,000/-*
Loss of Future Income	*₹17,70,000/-*
Loss of Amenities and on account of Dis-Figurement	*₹1,50,000/-*
Total	*₹23,21,100/-*

The breakup of compensation awarded by Tribunal to Injured- *Mofid Khan* is as under:-

Medical Expenses	₹ 4,100 /-

Pain & Suffering & Enjoyment of life	₹ 1,00,000/-
Special Diet & Conveyance & Attendant	₹ 65,000/-
Loss of Education	₹ 10,000/-
Loss of Future Income	₹ 1,70,000/-
Loss of Amenities	₹ 1,00,000/-
Total	₹ 4,49,100/-

5. Learned counsel for appellant – *Shriram General Insurance Co. Ltd.* (hereinafter referred to as Insurer), assails the impugned Award on the ground that Tribunal has erred in assessing the functional disability of injured – *Mahesh* at 80%. It is submitted that the permanent disability suffered by Injured was 45% in relation to his right lower limb and so it was submitted that the functional disability be assessed at 40%. It is further submitted that in case of Injured – *Mofid Khan*, permanent disability suffered is 21% in relation to his left lower limb and the Tribunal has assessed the functional disability to be 10%. It is next submitted that the Tribunal has erred in taking the notional income of Injured – *Mofid Khan* on minimum wages of a non-matriculate. It is pointed out that as per the second Schedule of the Motor Vehicles Act, the notional income of a student has to be assessed at ₹15,000/- per annum. It is also submitted on behalf of the appellant - Insurer that the compensation under the non-pecuniary head is on the higher side and it needs to be reduced.

6. On the contrary, learned counsel for the Injured persons supports the impugned Award and submits that the compensation assessed by the Tribunal is just and proper.

7. Upon hearing and on perusal of impugned Award and the evidence on record, I find that Injured – *Mahesh* in his evidence has not deposed as to what practical difficulties he is facing in life due to injuries suffered by him in this accident. The disability certificate has not been proved on record by any doctor. Injured– *Mahesh* is a driver by profession and due to this accident, he can no longer drive. He was earning ₹12,000/- per month. Minimum wages of a skilled worker at the relevant time were ₹10,374/- per month. Supreme Court in *Raj Kumar versus Ajay Kumar and Another,* (2011) 1 SCC 343 has clarified that the functional disability is not to be mechanically assessed on the basis of permanent disability suffered by the Injured. In the facts and circumstances of this case, I find that the Tribunal has erred in assessing the functional disability at 80% as the Injured can earn by doing other jobs. So the functional disability of Injured – *Mahesh* reassessed at 40%.

8. In case of Injured – *Mofid Khan*, I find that the Tribunal has rightly assessed the functional disability to be 10% but has erred in taking the notional income of Injured- *Mofid Khan* on the minimum wages payable to a non-matriculate. Hon'ble Supreme Court in *Master Mallikarjun versus Divisional Manager, The National Insurance Co. Ltd. And Another***,** (2014) 14 SCC

396while dealing with the case of an Injured, aged 12 years has declared that where the disability is 10% and above, composite compensation on account of the disability suffered has to be ₹3,00,000/- apart from the medical expenses etc.

9. In case of Injured – *Mahesh*, the compensation on account of disability suffered by him is reassessed as follows : -

₹12,289 PM x 12 x 15 x 40/100 = ₹8,84,808/-

The total compensation payable to Injured-*Mahesh* is as under: -

Medical expenses	₹ 12,100/-
Special Diet & Conveyance & Attendant	₹ 66,000/-
Loss of income during treatment	₹ 1,73,000/-
Loss of Earning Capacity	₹ 8,84,808/-
Total	₹ 11,35,908/-

10. In case of Injured- *Mofid Khan*, the compensation payable to him is reassessed as under :-

Medical Expenses	₹ 4,100 /-
Composite Compensation on account of Pain & Suffering, Enjoyment of Life and Loss of Amenities	₹ 3,00,000/-
Special Diet & Conveyance & Attendant	₹ 65,000/-

Loss of Studies	₹ 10,000/-
Total	₹ 3,79,100/-

11. Consequentially, the compensation granted by the Tribunal to Injured – *Mahesh* is reduced from ₹23,21,100/- to ₹11,35,908/- and the compensation granted by the Tribunal to Injured – *Mofid Khan* is reduced from ₹4,49,100/- to ₹3,79,100/-. In view of a three Judge Bench decision of Supreme Court decision in *Jagdish v. Mohan and Others,* (2018) 4 SCC 571, respondents/ Injured are entitled to interest @ 9% *per annum*. Thus, the modified compensation shall carry interest @ 9% per annum. The statutory deposit alongwith the excess deposit, if any, be refunded to the Insurer and thereafter, the compensation as per this judgment be released to respondent – Injured in the manner already indicated in the impugned Award.

12. While modifying the impugned Awards in the aforesaid terms, these two appeals and the pending applications stand disposed of.

(SUNIL GAUR)
JUDGE

SEPTEMBER 6, 2018
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