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

Date of Decision: October 08, 2018

\+ **MAC.APP. 454/2013**

UNITED INDIA INSURANCE CO LTD. ..... Appellant
Through: Mr. Pankaj Gupta, Advocate for Ms. Suman Bagga, Advocate

Versus

ATIQ AHMAD @ GUDDU & ORS. ..... Respondents
Through: Mr. A.Rasheed Qureshi, Advocate

\+ **MAC.APP. 1028/2013**

ATIQ AHMAD @ GUDDU & ORS. ..... Appellant
Through: Mr. A.Rasheed Qureshi, Advocate

Versus

UNITED INDIA INSURANCE CO LTD. ..... Respondents
Through: Mr. Pankaj Gupta, Advocate for Ms. Suman Bagga, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 30th January, 2013 grants compensation of ₹8,74,694/- with interest @ 7.5% *per annum* to a Motor Mechanic-*Atiq Ahmad (hereinafter referred to as Injured),* aged 39 years, on account of grievous injuries suffered by him in a vehicular accident, which took place on 28th September, 2009.

2. In the above captioned first appeal, United India Insurance Co. Ltd. *(hereinafter referred to as the "Insurer")* seeks reduction in the quantum

of compensation awarded by the Tribunal Motor Accident Claims Tribunal *(hereinafter referred to as "the Tribunal")* whereas in the above captioned second appeal, the enhancement of compensation is sought by the 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 factual background of this case, as noticed in the impugned Award, is as under:-

> *"The brief facts arising out of this case are that on 28/09/2009 at about 9:20 p.m injured was going towards his residence from Kundli Pul via Nahar Patri by his motorcycle bearing no. UP-07E-6394 and when he reached at Hindan Nahar Patri near Shankhawar Hospital in the meantime a maruti van bearing no. DL-3CR-7351 which was being driven by its driver in a rash and negligent manner reached there and hit the motorcycle of petitioner/injured. Due to said impact petitioner fell down on the road and received multiple grievous injuries. He was taken to LBS hospital from there he was shifted to GTB hospital. Injured/petitioner spent about Rs. 50,000/- on his treatment till the date of filing of petition and is still under treatment and claimed Rs. 15,00,000/- with interest towards all the heads."*

4. To render the impugned Award, the Tribunal has relied upon evidence of Injured and as per Disability Certificate of 20th January, 2012 *(Ex. PW1/9),* the Injured had suffered permanent disability of 71% in relation to right eye, right upper and lower limbs. On the strength of

evidence recorded, impugned Award has been rendered. The breakup of compensation awarded by Tribunal to Injured is as under:-

1.	*Towards medical expenses*	*₹16,840/-*
2.	*Towards loss of income*	*₹7,57,854/-*
3.	*Towards better diet*	*₹20,000/-*
4.	*Towards conveyance*	*₹15,000/-*
5.	*Towards attendant*	*₹15,000/-*
6.	*Towards pain and suffering*	*₹50,000/-*
	Total	***₹8,74,694/-***

5. Learned counsel for Insurer assails impugned Award on the ground that the Tribunal has erred in assessing functional disability of Injured at 71%, whereas it ought to be considered not more than 40%. It is submitted that the Tribunal has erred in making addition of 50% towards *'future prospects'*. So, it is submitted that the compensation granted to Injured ought to be suitably reduced.

6. On the contrary, learned counsel for Injured refutes the aforesaid stand taken on behalf of Insurer and submits that the compensation granted by the Tribunal is inadequate. Enhancement of compensation is sought on the ground that the functional disability of the Injured ought to be assessed at 100%. It is submitted that the Injured used to pay his children's school fee of ₹5,000/- per month and the rent of ₹5,500/- per month and so, income of Injured ought to be assessed at ₹12,000/- per month. It is further submitted by Claimant's counsel that the compensation granted under the *'non pecuniary heads'* ought to be substantially enhanced as Injured has become handicapped forever and the interest payable on the awarded compensation ought to be 9% *per annum.* Nothing else is urged by either side.

7. Upon hearing and on perusal of impugned Award and the evidence on record, I find that the Tribunal has rightly assessed the functional disability at 71%. There is no basis to assess it below or above 71%. So far as addition of 50% towards *"future prospects"* by the Tribunal is concerned, I find that in view of Supreme Court's Three Judge Bench decision in *Jagdish v. Mohan and Others,* (2018) 4 SCC 571, it has to be 40% and not 50%, as has been done by the Tribunal. The Tribunal while assessing the *"loss of earning capacity"* of Injured has taken his income at ₹3,953/- per month i.e. minimum wages payable to an unskilled worker. It is pertinent to note that copy of the Income Tax Return *(hereinafter referred to as ITR)* of Injured, though for the year 2004-05, is on record and as per this ITR, his annual income was ₹48,750/- i.e. ₹4062.50/-per month *(rounded off to ₹4063/- per month)*. Judicial notice can be taken of the fact that with passage of time, income of a person increases as one gets expertise and experience. Even otherwise, there is no material on record to suggest that the income of Injured had in any way reduced. Relevantly, Injured has placed on record copy of Rent Agreement at *Annexure P-4 to appeal filed by Injured*, to submit that Injured used to pay rent of ₹5,500/- per month. Similarly, Injured has placed on record photocopies of school documents of his children at *Annexure P-5 to the appeal filed by Injured*, to submit that they are students and he used to pay their school fee of ₹5,000/- per month. In light of aforesaid, it is safe to assess the income of Injured as per his ITR i.e. ₹4063/- per month. The multiplier of 15 applied by the Tribunal is appropriate. In view of the aforesaid, the *"loss of earning capacity"* of Injured is reassessed as under:-

₹4,063/- X 12 X 140/100 X 15 X 71/100 = ₹7,26,951.96/-

(rounded off to ₹7,26,952/-)

8. As regards compensation granted by the Tribunal under the *"non-pecuniary heads",* I find that compensation of ₹50,000/- towards *"pain and suffering"* is inadequate and it is accordingly enhanced to ₹1,00,000/-. However, compensation granted by the Tribunal under other heads is found to be just and proper and is thus maintained.

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

1.	*Medical expenses*	*₹16,840/-*
2.	*Loss of earning capacity*	*₹7,26,952/-*
3.	*Special diet*	*₹20,000/-*
4.	*Conveyance charges*	*₹15,000/-*
5.	*Attendant Charges*	*₹15,000/-*
6.	*Pain and suffering*	*₹1,00,000/-*
	Total	***₹8,93,792/-***

10. Consequentially, the compensation payable to Injured-*Atiq Ahmad* stands enhanced from ₹8,74,694/- to ₹8,93,792/-. A Three Judge Bench of Supreme Court in *Jagdish (supra)* has granted interest @ 9% *per annum* on the awarded compensation and so, Injured is also entitled to interest @ 9% *per annum*. As such, the reassessed compensation shall now carry interest @ 9% *per annum*. Six weeks' time is granted to Insurer to deposit the enhanced compensation with the Registrar General of this Court and thereafter, it be disbursed forthwith to Injured as per this

judgment, but in the manner indicated in the impugned Award. Statutory deposit, if any, be refunded to Insurer.

11. While modifying the impugned Award in aforesaid terms, the above captioned two appeals are accordingly disposed of.

(SUNIL GAUR)
JUDGE

OCTOBER 08, 2018
v/s