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

***Date of Decision: May 02, 2018***

\+ **MAC.APP. 429/2014**

RELIANCE GENERAL INSURANCE COMPANY LTD.

..... Appellant

Through: Mr. Rajeev M. Roy and Mr. P. Srinivasan, Advocates

versus

MD. ILLIYAS & ORS .....Respondents

Through: Mr. Y.P. Laroya, Advocate for respondent No.1-Injured

\+ **MAC.APP. 43/2015**

MOHD ALIYAS & ORS .....Appellants

Through: Mr. Y.P. Laroya, Advocate for petitioner No.1-Injured

versus

RELIANCE INSURANCE CO LTD ..... Respondent

Through: Mr. Rajeev M. Roy and Mr. P. Srinivasan, Advocates

**CORAM:**
**HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT**
**(ORAL)**

1. The above-captioned first appeal has been preferred by *Reliance General Insurance Company Ltd. (hereinafter referred to as 'Insurer')* to seek reduction in the quantum of compensation, whereas, the above-

captioned second appeal has been preferred by *Md. Illiyas (hereinafter referred to as 'Injured')* to seek enhancement of compensation. Since these appeals arise out of one 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.

2. The above-captioned two appeals are directed against impugned Award of 30th January, 2014 vide which *Motor Accident Claims Tribunal, Karkardooma Courts, Delhi (hereinafter referred to as 'the Tribunal')* has granted compensation of ₹11,26,600/- with interest @ 9% *per annum* to Md. Illiyas, aged 46 years, who sustained grievous injuries in a vehicular accident on 15th August, 2009. The facts as noticed in impugned Award are as under: -

> *"2. The brief facts, as stated by petitioner are that on 15.08.2009 at about 1.00 p.m. the injured was riding on motorcycle no.DL-5SR-2913 along with his sister and was going from Delhi to Makanpur, Ghaziabad and when they reached at the round about of Airport, Pasora, a vehicle bearing no.DL-1LE-0341 driven rashly and negligently came from opposite side and hit the motorcycle. The petitioner fell down and suffered injuries. It is stated that the petitioner was working as a private contractor and was earning ₹ 12,500/- per month."*

3. The Tribunal has relied upon evidence of Injured-*Mohd. Illiyas (PW-1); Danvir Singh (PW-2),* Record Clerk, Lok Nayak Hospital regarding admission of petitioner in the said hospital and *Dr. Basant Kumar (PW-3)*, Sr. Resident, Orthopaedician, who has opined the permanent disability suffered by Injured as 60% in the right lower limb.

On behalf of Insurer, R3W1 has deposed regarding insurance of the vehicle in question.

4. While taking the income of Injured to be ₹1,50,903**/-** the Tribunal has made addition of 30% towards *'future prospects'* and after applying the multiplier of 13, *'loss of earning capacity'* has been assessed at ₹7,65,079/-. The break-up of compensation granted by the Tribunal is as under: -

| | | |
|---|---|---|
| *1* | *Compensation towards pain and suffering* | *₹80,000/-* |
| *2* | *Compensation towards loss of amenities and enjoyment* | *₹80,000/-* |
| *3* | *Compensation for disfiguration and loss of expectancy of life* | *₹1,00,000/-* |
| *4* | *Loss of earning capacity due to injuries* | *₹7,65,079/-* |
| *5* | *Loss of earning of petitioner for 4 months @ ₹18,108/-* | *₹72,432/-* |
| *6* | *Expenses towards medical bills* | *₹19,085/-* |
| *7* | *Compensation towards conveyance and special diet (without bills)* | *₹10,000/-* |

5. The challenge to impugned Award by learned counsel for Insurer is on the ground that while relying upon Supreme Court's decision in *Rajesh & Others v. Rajbir Singh & Ors,* (2013) 9 SCC 54, addition of 30% towards *'future prospects'* has been erroneously made by the Tribunal, as the said decision was rendered in a death case.

6. Learned counsel for Insurer submits that the *'loss of earning for four months'* has been erroneously calculated while taking the income of injured to be ₹18,108/- per month, whereas it was ₹12,575/- per month as

per ITR returns and so, compensation under the head of *'loss of earning for four months'* ought to be ₹50,301/- and not ₹72,432/-. It is pointed out by learned counsel for Insurer that neither there is any *'disfigurement'* nor *'loss of expectancy of life'* and so, compensation of ₹1 lac granted under this head is not justified. It is submitted by learned counsel for Insurer that compensation granted under other heads is on the higher side and it needs to be suitably reduced. It is also pointed out by learned counsel for Insurer that on the day of accident, Injured was not possessing any valid driving licence and so, the liability to pay compensation is not of Insurer.

7. On the contrary, learned counsel for Injured submits that quantum of compensation is infact on the lower side and in any case, reduction of quantum of compensation is uncalled for. He relies upon Supreme Court's decision in *Sandeep Khanuja v. Atul Dande and Another,* (2017) 3 SCC 351 to submit that in a case of *Chartered Accountant,* the functional disability was considered to be equivalent to permanent disability suffered and so, in the instant case also, the functional disability ought to be 60% and not 30%. So, enhancement of compensation is sought on behalf of Injured.

8. Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that there is no basis to conclude that injured was not issued driving licence or that it was not valid on the day of the accident. Permanent disability suffered in the right lower limb cannot be the same in reference to whole body and so, the functional disability assessed at 30% appears to be justified. Supreme Court in *Jagdish v. Mohan & Ors.,* 2018 SCC OnLine SC 184, in an injury case, has made addition of 40% towards *'loss of future prospects'* on account

of disability suffered. There is nothing in evidence of injured to indicate as to what kind of work he had been doing before the accident and so, reliance placed upon Supreme Court's decision in *Sandeep Khanuja (supra)* is of no avail. Thus, no case for enhancement of compensation is made out by Injured.

9. So far as reduction of compensation is concerned, I find that the evidence regarding *'disfigurement'* or *'loss of expectancy of life'* is lacking and so, compensation of ₹1 lac granted by the Tribunal under this head is unjustified and is accordingly set aside. So far as compensation granted under the other heads is concerned, I find it to be reasonable, except for compensation granted under the head of *'loss of earning for four months'*. While taking the income of injured to be ₹12,000/- odd per month, annual income of injured has been rightly assessed by the Tribunal whereas, while assessing compensation under the head of *'loss of earning for four months'*, the income of Injured has been taken by the Tribunal to be ₹18,000/- odd, whereas it ought to have been ₹12,000/- odd. So, compensation granted under this head is reduced from ₹72,432/- to ₹50,301/-. In light of the aforesaid, compensation payable to Injured is reassessed as under: -

| | | |
|---|---|---|
| 1 | Compensation towards pain and suffering | ₹80,000/- |
| 2 | Compensation towards loss of amenities and enjoyment | ₹80,000/- |
| 4 | Loss of earning capacity due to injuries | ₹7,65,079/- |
| 5 | Loss of earning of petitioner for 4 months @ ₹18,108/- | ₹50,301/- |
| 6 | Expenses towards medical bills | ₹19,085/- |

| | | |
|---|---|---|
| 7 | Compensation towards conveyance and special diet (without bills) | ₹10,000/- |
| | **Total** | **₹10,04,465/-** |

10. In light of the aforesaid, the quantum of compensation granted to Injured is reduced from ₹11,26,600/- to ₹10,04,465/-, and it shall carry interest @ 9% *per annum.* Compensation in terms of this judgment be forthwith released to Injured in the manner as indicated in impugned Award and thereafter, the excess amount deposited by Insurer be refunded alongwith statutory deposit, if any, as per Rules.

11. These appeals are disposed of while modifying the impugned Award in the aforesaid terms.

**(SUNIL GAUR)**
**JUDGE**

**MAY 02, 2018**
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