

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

Date of Decision: September 27, 2018

+ **MAC.APP. 33/2018**

RELIANCE GENERAL INSURANCE CO LTD. Appellant

Through: Mr.A.K.Soni, Advocate

Versus

GURDEV SINGH & ORS.Respondents

Through: Mr. R.K.Nain, Advocate

+ **MAC.APP. 311/2018**

GURDEV SINGH Appellant

Through: Mr. R.K.Nain, Advocate

Versus

RAMSHRAY YADAV & ORS (M/s RELIANCE GENERAL
INSURANCE CO)Respondents

Through: Mr.A.K.Soni, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL)

1. Impugned Award of 24th November, 2017 grants compensation of ₹12,72,000/- with interest @9% per annum to *Gurdev Singh (hereinafter referred to as the "Injured")*, aged 37 years, on account of grievous injuries suffered by him in a vehicular accident, which took place on 13th August, 2009.

2. In the above captioned first appeal, M/s Reliance General Insurance Company (*henceforth referred to as the "Insurer"*) seeks reduction in the quantum of compensation awarded, whereas in the above

captioned second appeal, enhancement of compensation is sought by Injured-Gurdev Singh.

3. 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. The factual background of this case, as noticed in the impugned Award, is as under:-

“That, the brief material facts to decide this claim petition are that on dated 13.08.2009, Sh. Gurdev Singh, petitioner/injured was driving vehicle bearing no. HR-38K-0063 and he was taking it from Tinsukhia to Delhi having goods loaded in it and when reached under the territory of police station Khalilabad, it was around 5:00 or 06:00 a.m., one Canter bearing no. UP-52F-2603-EICHER-Canter came from the opposite direction while being driven by its driver rashly and negligently and hit the vehicle of the petitioner/injured and he sustained multiple grievous injuries and because of this reason, the present petition for compensation has been filed.”

4. To render the impugned Award, Motor Accident Claims Tribunal (hereinafter referred to as the “Tribunal”) has relied upon evidence of Injured-Gurdev Singh (PW-1) and as per Disability Certificate, the Injured had suffered permanent disability of 30% in relation to visual disability in his left eye. On the strength of evidence recorded, impugned Award has been rendered. The breakup of compensation awarded by the Tribunal to the Injured is as under:-

1.	Medical Expenses	₹2,81,603/-
----	------------------	-------------

2.	Loss of income	₹52,524/-
3.	Pain and suffering	₹50,000/-
4.	Conveyance and Special diet etc.	₹25000/- +₹25000/- = ₹50,000/-
5.	Loss of Amenities of life	₹50,000/-
6.	Just compensation on account of disability	₹7,87,860/-
	Total	₹12,71,987/- (which is rounded off to ₹12,72,000/-)

5. Learned counsel for Insurer assails impugned Award on the ground that the Tribunal has erroneously assessed the “*functional disability*” of the Injured at 100% and has not considered the actual disability suffered. It is submitted that the “*functional disability*” ought to be assessed at 30%. It is further submitted that the compensation granted under the heads of ‘*loss of amenities of life*’ and ‘*pain and suffering*’ is exorbitant and it needs to be reduced. It is further submitted that the Tribunal has erred in taking the age of Injured as 37 years on the basis of *Aadhar Card*, which is not duly proved on record. It is further submitted that as per Voter’s Election Identity Card, the age of Injured on the day of accident was 47 years and so, multiplier of 13 and not 15 has to be applied. Thus, it is submitted by learned counsel for Insurer that the compensation granted by the Tribunal to the Injured needs to be suitably reduced.

6. On the other hand, enhancement of compensation is sought by learned counsel for Injured-*Gurdev Singh* on the ground that the Tribunal

has erred in taking the minimum wages of a skilled worker while assessing the income of Injured. It is pointed out that evidence of Injured regarding earning ₹10,000/- per month on the day of accident ought to have been accepted by the Tribunal, as there is no worthwhile challenge to it in the cross-examination. Reliance is placed upon Section 26 of Motor Transporters Workers Act, 1961, to submit that extra wages payable for over time is double the wages normally payable to the drivers. Attention of this Court is drawn to the impugned Award to point out that the Injured was driving the insured vehicle from *Tinsukhia to Delhi* and so, the Injured is entitled to extra wages for over time. Lastly, it is submitted that the “*loss of earning capacity*” of Injured ought to be reassessed while taking the income of Injured to be ₹10,000/- and compensation under the non-pecuniary heads is wholly inadequate and so, the compensation granted by the Tribunal ought to be substantially enhanced. 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 erred in assessing the “*functional disability*” of the Injured at 100%. Supreme Court in *Raj Kumar Vs. Ajay Kumar & Anr.* (2011) 1 SCC 343 and *Mohan Soni Vs. Ram Avtar Tomar & Ors.* (2012) 2 SCC 267 has reiterated that the effect and impact of such permanent disability has to be assessed and the “*functional disability*” ought not be assessed mechanically. In the facts and circumstances of this case, I find that the “*functional disability*” of the Injured was not more than 30%.

8. So far as assessment of “*loss of earning capacity*” is concerned, I find that on earning capacity of Injured, there is no worthwhile challenge to Injured’s assertion that he was earning ₹10,000/- per month. On perusal of Injured’s Voter Identity Card, I find that on 1st January, 2005, he was aged 42 years. The Aadhar Card relied upon by the Tribunal was prepared subsequently and Birth Certificate of the Injured was also obtained later on. So, to assess the age of Injured, the Tribunal ought to have relied upon Injured’s Voter’s Identity Card, according to which the age of Injured was 47 years on the day of accident and so, the applicable multiplier of 13 ought to be applied and not 15, as applied by the Tribunal. Accordingly, the “*loss of earning capacity*” of Injured is re-assessed as under:-

$$₹10,000/- \times 12 \times 13 \times 30/100 = ₹4,68,000/-$$

9. As regards compensation of ₹50,000/- granted under the head of “*pain and suffering*” by the Tribunal is concerned, I find it to be inadequate and is therefore increase it to ₹75,000/-. Similarly, compensation of ₹50,000/- granted under the head of “*loss of amenities of life*” awarded by the Tribunal is also found to be inadequate and is also increased to ₹75,000/-. The Tribunal has noted in the impugned Award that Injured had sustained grievous injuries and must have taken treatment for one year and has accordingly assessed his “*loss of income*” while taking his income as of a skilled worker. In view of finding returned by this Court in preceding paragraph and while taking income of Injured @ ₹10,000/- per month, compensation granted to Injured under the head of “*loss of income*” is re-assessed as under :-

₹10,000/- per month X 12 = ₹1,20,000/-

10. Compensation awarded by the Tribunal under the other heads is found to be adequate. Accordingly, the compensation payable to Injured-*Gurdev Singh* is re-assessed as under:-

1.	Medical Expenses	₹2,81,603/-
2.	Loss of income	₹1,20,000/-
3.	Pain and suffering	₹75,000/-
4.	Conveyance and special diet	₹50,000/-
5.	Loss of Amenities of life	₹75,000/-
6.	Loss of earning capacity	₹4,68,000/-
	Total	₹10,69,603/-

11. Consequentially, the compensation awarded by the Tribunal to Injured-*Gurdev Singh* stands reduced from ₹12,72,000/- to ₹10,69,603/-. The modified compensation shall carry interest @ 9% *per annum* and it be released forthwith to Injured-*Gurdev Singh* in the manner, as indicated in the impugned Award. Statutory deposit alongwith excess deposit, be refunded to the Insurer.

12. With aforesaid modification in the impugned Award, the above captioned two appeals are accordingly disposed of.

(SUNIL GAUR)
JUDGE

SEPTEMBER 27, 2018

r