

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: August 28, 2018

+ **MAC.APP. 95/2018**

RELIANCE GENERAL INSURANCE CO LTD. Appellant

Through: Mr. A.K. Soni and Mr.Pavan
Kumar, Advocates

versus

GAURAV KUMAR & ORSRespondents

Through: Mr. P.S. Goindi, Advocate

+ **MAC.APP. 348/2018**

GAURAV KUMAR Appellant

Through: Mr. P.S. Goindi, Advocate

versus

SATISH KUMAR & ORS. (RELIANCE GENERAL
INSURANCE CO LTD)Respondents

Through: Mr. A.K. Soni and Mr.Pavan
Kumar, Advocates for respondent-
Insurer

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 23rd November, 2017 grants compensation of ₹63,56,000/- with interest @ 9% *per annum* to injured-Gaurav, aged 27 years, on account of grievous injury suffered by him in a vehicular accident, which took place on 7th September, 2009.

2. In the above-captioned first appeal, *Reliance General Insurance Co Ltd.* (hereinafter referred to as the Insurer) seeks reduction in the quantum of compensation by raising plea of contributory negligence. It is submitted that the contributory negligence of the injured was 50% in causing the accident in question, whereas in the above-captioned second appeal, enhancement of compensation is sought by claimants. Since both the appeals arise out of common impugned judgment, 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:-

“That, briefly stated, that the claim of the petitioner is that on dated 07.09.2009, petitioner Gaurav Kumar was going on his motorcycle bearing no. DL-8S-AL-2529 from Delhi to Sonipat to meet his friend when he reached near village Ladsoli, PS Murthal, Distt. Sonipat and hit by One Haiwa Dumper Bearing Registration No. HR-69-9350 and he sustained multiple grievous injuries and was admitted to Civil Hospital, Sonipat, Haryana was referred to JPN Apex Trauma Centre AIIMS, Delhi and the accident took place because of rash and negligent driving of R-1 and because of the reason the present claim petition has been filed for compensation.”

4. To render the impugned Award, Motor Accident Claims Tribunal (hereinafter referred to as the “Tribunal”) has relied upon evidence of injured and as per Disability Certificate of 23rd March, 2010, the injured had suffered permanent disability upto 80% in relation to left lower limb.

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

1.	<i>Medical expenses</i>	₹3,93,633/-
2.	<i>Loss of income</i>	₹3,98,232/-
3.	<i>Pain and suffering</i>	₹1,00,000/-
4.	<i>Loss of enjoyment of amenities of life</i>	₹1,00,000/-
5.	<i>Conveyance & Special diet, etc.</i>	₹1,02,400/- (₹ 52,400/- & ₹50,000/-)
6.	<i>Just compensation on account of disability</i>	₹45,13,330/-
7.	<i>Future expenses of artificial limb</i>	₹5,84,000/-
8.	<i>Attendant charges</i>	₹1,64,000/-
Total		₹63,55,595/- (rounded off to ₹63,56,000/-)

5. Insurer's counsel assails the impugned Award on the ground that the contributory negligence of Injured was to the extent of 50% and it is submitted that the Tribunal has erred in assessing the functional disability at 100%, whereas permanent disability was 80%. It is submitted that the functional disability of Injured ought to be assessed at 40%. It is pointed out by Insurer's counsel that income of the Injured as per Income Tax Returns (ITRs) for the year 2008-2009 was ₹3,48,595/- and for the year 2009-10, which is after the accident, it was ₹5,97,460/- and so, no compensation under the head of '*loss of earning capacity on account of disability*' ought to be granted. It is also submitted by Insurer's counsel that the Tribunal has erred in granting compensation of ₹3,98,232/- under the head of '*loss of income during the period of treatment*'. It is submitted

that the no interest on the cost of artificial limb can be granted as it is a '*future medical expense*'. So, it is submitted that the impugned Award deserves to be accordingly modified.

6. On the contrary, learned counsel for Injured refutes the aforesaid stand taken on behalf of Insurer and submits that the quantum of compensation granted by the Tribunal is inadequate. It is pointed out that the ITRs for the year 2009-10 of ₹5 lacs odd was filed on 30th September, 2009 and so, it cannot be said that the income of Injured after this accident has increased. It is submitted that Injured's ITR for the subsequent years has infact decreased. To assert so, copy of ITRs for the assessment year 2011-12 has been shown to the Court, which reveals that the income of the Injured was ₹2,40,000/-. It is submitted that before the accident, the Injured was doing the work of soil testing, which required extensive travel and for the purpose of soil testing, Injured used to earlier stand for the whole day, but now due to injuries sustained by him in the accident in question, he cannot do the work of soil testing and after this accident, Injured had opened a shop, which went into losses.

7. Enhancement of compensation is sought on the ground that the relevant ITR, which was to be considered by the Tribunal, was for the assessment year 2008-09, but the Tribunal has taken Injured's ITR for the assessment year 2007-08. It is submitted that the compensation under the head of '*pain and suffering*' ought to be ₹5 lacs. It is further submitted that the Tribunal has erred in not granting any compensation on account of '*loss of marriage prospects*' and the compensation granted under the head of '*loss of amenities of life*' needs to be enhanced from ₹1 lac to ₹3 lac.

8. Upon hearing and on perusal of impugned Award and the evidence on record, I find that in face of the deposition of Injured and the evidence on record, negligence cannot be attributed to Injured and no case of contributory negligence is made out to deny the compensation to Injured. As regards functional disability, I find that Injured had sustained 80% permanent disability in relation to left leg, i.e. amputation of the left leg above the knee, due to the accident in question. The Tribunal has assessed the functional disability at 100%. The Injured was a businessman and upon scrutiny of his evidence, I find that due to the Injuries suffered by him in this accident and on account of permanent disability, he had to close his business and according to Injured, he is now a liability on his family. There is nothing in cross-examination of the Injured to justify the assessment of functional disability of the Injured at 40%. However, in the facts and circumstances of this case, it is deemed appropriate to assess the functional disability of the Injured at 60%.

9. So far as income of Injured is concerned, I find that the relevant year to assess the income of the Injured is 2008-09 and the ITR for this assessment year was filed by the Injured before the accident in question and as per ITR for the assessment year, 2008-09, his income was ₹3,48,595/- and after deduction of tax, it is ₹3,02,384/-. ITRs for subsequent year i.e. 2009-10 cannot be made the basis to alter the quantum of compensation as the said ITR was filed shortly after the accident in question had taken place and so, it cannot be said that income of Injured had increased after the accident. Relevantly, the ITR for the subsequent year reveals that the income of the Injured had decreased.

10. In the considered opinion of this Court, the Tribunal has correctly assessed compensation under the head of '*loss of income*' due to the injuries suffered as Injured could not work for a period of 13 months. The interest on the compensation granted to obtain artificial limb is nominal and in the facts of the instant case, it is not required to be interfered with. The cost of obtaining artificial limb granted by the Tribunal cannot be said to be exorbitant as it takes care of the maintenance charges as well. However, the cost of replacement of the artificial limb has not been considered by the Tribunal, which needs to be taken care of.

11. So far as the reimbursement of '*medical expenses*' is concerned, I find that it is justified in light of the evidence on record. The '*loss of income*' due to the disability suffered has also been rightly assessed. However, '*loss of earning capacity*' needs to be reassessed on the basis of income of the Injured for the relevant year i.e. Assessment Year 2008-09. The multiplier of 17 applied by the Tribunal is appropriate. However, while computing the compensation payable on account of the disability suffered due to the accident in question, the Tribunal has erred in not making any addition towards '*future prospects*'. In view of Supreme Court's Constitution Bench decision in *Pranay Sethi (supra)*, addition of 40% towards '*future prospects*' is made. Accordingly, '*loss of future earning capacity*' is reassessed as under: -

$$₹3,02,384/- \text{ p.a.} \times 60/100 \times 17 \times 140/100 = ₹43,18,043/-$$

12. As regards compensation granted by the Tribunal under the '*non-pecuniary heads*' is concerned, I find that it to be on lower side. In the facts and circumstances of this case and in light of the evidence on

record, the compensation payable under the head of '*pain and suffering*' is enhanced from ₹1,00,000/- to ₹1,50,000/-. The compensation under the head of '*loss of amenities of life*' is also enhanced from ₹1,00,000/- to ₹1,50,000/-. The Injured was unmarried on the day of the accident. The Tribunal has erred in not granting any compensation under the head of '*loss of marriage prospects*'. The Injured was aged 27 years on the day of the accident. In view of functional disability suffered by the Injured, it is deemed appropriate to grant compensation of ₹1,50,000/- under this head to Injured. Compensation granted by the Tribunal under the head of '*Conveyance, special diet, etc.*' is found to be adequate and is thus maintained. It is made clear that as and when the artificial limb by the Injured is required to be replaced, then the Injured is at liberty to visit a panel hospital of the Insurer, who shall ensure that the artificial limb provided to the Injured is replaced and the costs of the replacement shall be borne by the Insurer and directly remitted to the Agency concerned.

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

1.	<i>Loss of marriage prospects</i>	₹1,50,000/-
2.	<i>Loss of future earning capacity</i>	₹43,18,043/-
3.	<i>Medical expenses</i>	₹3,93,633/-
4.	<i>Loss of income</i>	₹3,98,232/-
5.	<i>Pain and suffering</i>	₹1,50,000/-
6.	<i>Loss of amenities of life</i>	₹1,50,000/-
7.	<i>Conveyance & Special diet, etc.</i>	₹1,02,400/- (₹52,400/- & ₹50,000/-)
8.	<i>Future expenses of artificial limb</i>	₹5,84,000/-

9.	<i>Attendant charges</i>	₹ 1,64,000/-
	<i>Total</i>	₹ 64,10,308/-

14. Consequentially, the compensation payable to the Injured stands enhanced from ₹63,56,000/- to ₹64,10,308/-, which shall carry interest @ 9% *per annum*. The enhanced compensation be deposited by Insurer with the Tribunal within four weeks from today. The awarded compensation be disbursed in the ratio and manner as indicated in the impugned Award. Statutory deposit, if any, be refunded to Insurer.

15. With aforesaid directions, the above captioned two appeals are disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 28, 2018

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