

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: September 26, 2018

+ **MAC.APP. 347/2018**

SHAMIM AKHTARAppellant
Through: Ms. Aruna Mehta, Advocate

Versus

DINESH CHAND & ANR (BAJAJ ALLIANZ GENERAL
INSURANCE CO LTD)Respondents
Through: Mr.Pankaj Gupta, Advocate for
Ms. Suman Bagga, advocate for respondent No.
2

+ **MAC.APP. 616/2018 & C.Ms. 26742/2018**

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD
.....Appellant
Through: Mr.Pankaj Gupta, Advocate for
Ms. Suman Bagga, advocate

Versus

SHAMIM AKHTAR & ANR.Respondents
Through: Ms. Aruna Mehta, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

C.M. 13662/2018 in MAC. APP. 347/2018

There is delay of 271 days in filing the accompanying appeal.

For the reasons stated in the application, it is allowed and the delay is condoned.

The application is disposed of.

C.M. 26744/2018in MAC. APP. 616/2018

There is delay of 174 days in filing the accompanying appeal.

For the reasons stated in the application, it is allowed and the delay is condoned.

The application is disposed of.

MAC.APPs. 347/2018 & 616/2018 & C.Ms. 26742/2018

1. Impugned Award of 18th March, 2017 grants compensation of ₹33,63,800/- to *Shamim Akhtar (hereinafter referred to as the "Injured")*, aged 42 years, on account of grievous injuries suffered by him in a vehicular accident, which took place on 29th May, 2011. Interest@ 10% per annum has been granted on compensation amount of ₹20,65,000/-. No interest has been awarded on costs of artificial limb and its maintenance.

2. In the above captioned second appeal, Bajaj Allianz General Insurance Company Limited (*henceforth referred to as the "Insurer"*) seeks reduction in the quantum of compensation awarded, whereas in the above captioned first appeal, enhancement of compensation is sought by Injured-*Shamim Akhtar*.

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

"The petitioner has filed petition with the averments that on 29.05.2011 at 09.40 p.m. he along with Amir

Ujma was standing near Bypass, Badaun. His relatives were sitting on the pavement. One Scoda car bearing no. UP-80BF-0028 came from Badaun side in a high speed and in a rash and negligent manner and ran over his left leg and chest. He sustained crush injuries on his left leg and injuries all over the body. He was removed to Civil Hospital, Badaun and thereafter shifted to LNJP Hospital, New Delhi. FIR No. 129/11, Crime case no. 939/11 PS, Usani, District Badaun, U.P. was registered against the driver of the car. The accident has taken place due to the rash and negligent driving of respondent no. 1.”

4. To render the impugned Award, Motor Accident Claims Tribunal (hereinafter referred to as the “Tribunal”) has relied upon evidence of Injured-Shamim Akhtar and as per Disability Certificate (Ex.PW5/1), the Injured had suffered permanent disability of 85% in relation to left lower limb. On the strength of evidence recorded, impugned Award has been rendered. The breakup of compensation awarded by Tribunal to the Injured-Shamim Akhtar is as under:-

1.	<i>Compensation towards pain and sufferings</i>	<i>₹1,50,000/-</i>
2.	<i>Loss of earning capacity due to disability</i>	<i>₹14,28,000/-</i>
3.	<i>Loss of earning for a period of 6 months</i>	<i>₹60,000/-</i>
4.	<i>Attendant charges</i>	<i>₹36,000/-</i>
5.	<i>Special diet and conveyance</i>	<i>₹35,000/-</i>
6.	<i>Compensation on account of physiotherapy</i>	<i>₹56,000/-</i>
7.	<i>Compensation towards loss of amenities and enjoyment of life</i>	<i>₹1,50,000/-</i>
8.	<i>Compensation towards disfigurement</i>	<i>₹1,50,000/-</i>

9.	<i>Compensation on account of artificial limb</i>	₹12,48,800/-
10	<i>Compensation on account of maintenance of artificial limb</i>	₹50,000/-
<i>Total</i>		₹33,63,800/-

5. Learned counsel for Insurer assails impugned Award on the ground that the Tribunal has erroneously assessed the “*functional disability*” of the Injured at 85% on the basis of Disability Certificate (*Ex.PW5/1*) and has not considered the actual disability suffered. It is submitted that the “*functional disability*” ought to be assessed at 42%. It is submitted that employer (*PW-6*) of the Injured was himself earning ₹15,000/- per month and so, it cannot be said that he was paying ₹10,000/- per month to the Injured. So, it is submitted that income of the Injured ought to be assessed on minimum wages of a skilled worker i.e. ₹202.60 per day payable to a worker in Uttar Pradesh. It is next submitted that the cost of ₹12,48,800/- for the artificial limb is exorbitant as the artificial limb are being provided by Safdarjung Hospital at nominal cost of ₹10,000/- to ₹15,000/-. It is submitted that a Three Judge Bench of Supreme Court in a recent decision of *Jagdish v. Mohan and Others*, (2018) 4 SCC 571 has granted interest @ 9% *per annum* on the awarded compensation and so, interest @ 9% *per annum* ought to be granted. It is further submitted that the compensation granted under the heads of ‘*loss of amenities of life*’ and ‘*pain and suffering*’ is exorbitant and thus compensation awarded needs to be suitably reduced.

6. On the other hand, learned counsel for Injured- *Shamim Akhtar* refutes the aforesaid stand taken on behalf of Insurer and submits that the

quantum of compensation granted by the Tribunal is inadequate. Enhancement of compensation is sought on the ground that the Tribunal has erred in not making any addition towards “*future prospects*” of Injured and addition of 30% towards “*future prospects*” ought to be made. It is submitted that the functional disability of the Injured ought to be assessed at 100% as he is unable to work as a tailor. It is next submitted that the Tribunal has erred in not granting any compensation on account of loss of marriage prospects, as the Injured was unmarried when this accident took place and so, compensation granted by the Tribunal needs to be substantially enhanced. Reliance is placed upon Supreme Court’s decision in *Sanjay Kumar vs. Ashok Kumar and Anr.* (2014) 5 SCC 330 and *Neerupam Mohan Mathur vs. New India Assurance Co. Ltd.* (2013) 14 SCC 15 in support of above submissions.

7. Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that the Tribunal has rightly considered the functional disability of the Injured at 85%. Injured was a tailor by profession and due to injuries suffered in this accident, he cannot do the tailoring work. Judicial notice can be taken of the fact that in the normal course, a tailor earns ₹10,000 per month. The Tribunal has rightly assessed the income of Injured at ₹10,000 per month and the multiplier applied is also appropriate.

8. So far as making of addition towards ‘*future prospects*’ is concerned, I find that Supreme Court in *Anant son of Sidheshwar Dukre Vs. Pratap son of Zhamnnappa Lamzane & Anr.* 2018 (10) SCALE 130, while dealing with the case of an Injured has not made any addition towards ‘*future prospects*’ and so, no addition towards “*future prospects*”

in the case of Injured-*Shamim Akhtar* is to be made. The '*loss of earning capacity*', has been rightly assessed by the Tribunal. The compensation granted under the '*non pecuniary heads*' also appears to be just and reasonable and no case for its reduction is made out.

9. As far as providing of artificial limb is concerned, I find that the cost of the artificial limb @ ₹12,48,800/- granted by the Tribunal is without any sound basis. Nowadays, artificial limbs are being provided by Safdarjung Hospital at a nominal cost. In this view of the above, Insurer is directed to ensure that an artificial limb is provided to appellant from Safdarjung Hospital or from any other hospital at reasonable cost and the said costs shall be borne by the Insurer. Let this exercise be done within a period of six months and in case it is not so done, then the Injured shall be at liberty to approach this Court by way of an application in this disposed of appeal.

10. Consequently, the compensation payable to the Injured is reassessed as under:-

1.	<i>Compensation towards pain and sufferings</i>	₹1,50,000/-
2.	<i>Loss of earning capacity due to disability</i>	₹14,28,000/-
3.	<i>Loss of earning for a period of 6 months</i>	₹60,000/-
4.	<i>Attendant charges</i>	₹36,000/-
5.	<i>Special diet and conveyance</i>	₹35,000/-
6.	<i>Compensation on account of physiotherapy</i>	₹56,000/-
7.	<i>Compensation towards loss of amenities and enjoyment of life</i>	₹1,50,000/-
8.	<i>Compensation towards disfigurement</i>	₹1,50,000/-

<i>Total</i>	₹20,65,000/-
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10. Consequentially, the compensation awarded by the Tribunal to Injured-*Shamim Akhtar* stands reduced from ₹33,63,800/- to ₹20,65,000/- with rider that the artificial limb shall be provided by the Insurer to the Injured within a period of six months and its cost as well as the maintenance cost shall be borne by the Insurer. As far as interest granted by the Tribunal is concerned, I find that in view of decision of Three Judge Bench of Supreme Court in *Jagdish (Supra)*, interest @ 9% per annum on the modified compensation is granted. The modified compensation be released forthwith to Injured-*Shamim Akhtar* 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 and the applications are accordingly disposed of.

(SUNIL GAUR)
JUDGE

SEPTEMBER 26, 2018

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