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

Date of Decision: September 28, 2018

\+ **MAC.APP. 437/2013**

THE ORIENTAL INSURANCE CO. LTD.

..... Appellant

Through: Mr A.K.Soni, Advocate.

versus

SURESH KUMAR & ORS.

..... Respondent

Through: Mr M.K.Sinha, Advocate for R-1.

\+ **MAC.APP. 828/2013**

SH SURESH KUMAR

..... Appellant

Through: Mr M.K.Sinha, Advocate.

versus

SH JAIBIR SINGH & ORS ..... Respondents

Through: Mr A.K.Soni, Advocate for Insurance Company.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL)

1. The above captioned two appeals arise out of impugned Award of 17th December, 2012, vide which the Motor Accident Claims Tribunal *(henceforth referred to as "the Tribunal")* has awarded compensation of ₹34,95,700/- to a Chowkidar-*Suresh,* aged 45 years, who was grievously injured in a vehicular accident which took place on 10th July, 2010. The Tribunal has granted interest @ 9% per annum on ₹3,44,100/- while

excluding interest on future medical expenses.

2. In the above captioned first appeal, Oriental Insurance Company Limited *(henceforth referred to as the "Insurer")* seeks exoneration from paying the compensation awarded by the Tribunal, whereas in the above captioned second appeal, Injured-*Suresh (henceforth referred to as the 'Injured')* seeks enhancement in the quantum of compensation awarded by the Tribunal.

3. Since these two appeals arise out of one vehicular accident, therefore, with the consent of learned counsel for the parties, these appeals have been heard together and are being decided by this common judgment.

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

> *"Briefly, the facts are that on 10.07.10, the petitioner was going to his place of duty from his house on a scooter bearing no. DL 3S BT 0272 being driven by respondent no. 1 in a zig zag manner and at a high speed came from the opposite side and hit his scooter. He fell down and sustained head injuries. He was taken to Safdarjung Hospital. A case was registered at the Police Station Mehrauli vide FIR No. 292/10. The petitioner was a Chowkidar in MCD and used to get Rs. 13677/- p.m. After the accident, he could not resume his duty and became permanent disabled. Respondent no. 2 was the owner of the motorcycle and it was insured with respondent no. 3. A Detailed Accident Report was also filed by the SHO of the police station which was clubbed with the petition. On the DAR a reply/legal offer of Rs. 50760/- was also filed by the insurance company. Respondent no. 1 and 2 did not contest the petition."*

5. To render the impugned Award, the Tribunal has relied upon evidence of wife of the Injured-*Suresh,* Disability Certificate of 30th March, 2012 and the other evidence on record. As per the aforesaid Disability Certificate of 30th March, 2012, the Injured has become 90% permanently disabled in relation to his whole body and the Tribunal has assessed his *"functional disability"* to be 100%, as he is in totally vegetative state. The Tribunal has considered *"loss of income"* and *"future income"* while taking Injured's net salary of ₹12,507/- per month and has applied the multiplier of 14. Addition of 30% has been made by the Tribunal while taking into account the inflation aspect.

6. The breakup of compensation awarded by the Tribunal to the Injured–*Suresh* is as under:-

1	Medical expenses	₹20,000/-
2	Future Medical Expenses	₹20,000/-
3	Pain & Sufferings & Enjoyment of life	₹1,00,000/-
4	Special Diet and Conveyance	₹24,000/-
5	Attendant Charges	₹4,00,000/-
6	Loss of Income	₹1,00,100/-
7	Loss of Future Income	₹27,31,600/-
8	Loss of Amenities	₹1,00,000/-
	Total	₹34,95,700/-

7. The challenge to the impugned Award by learned counsel for Insurer is on the ground that involvement of insured motor vehicle in the accident in question does not stand proved. It is submitted that the Tribunal has erroneously relied upon the evidence of alleged eye-witness–Manish *Kumar (PW-2).* It is pointed out that in the claim petition, it is stated that somebody informed the family of the Injured

about this accident and then they took the Injured to their home, which was nearby. So, it is submitted that the presence of the alleged eye-witness - *Manish Kumar (PW-2)* at the spot is clearly ruled out. It is further pointed out that as per the MLC *(Ex.PW1/12)* of the Injured, his wife had taken him to Hospital on 28th July, 2010.

8. It is next submitted by counsel for Insurer that the FIR of this case was registered on the basis of information received regarding this accident, after 18 days of this accident and even in the FIR, there is no mention of the Registration Number of the insured vehicle in question. It is urged that these details came to light after 73 days, on the statement of some informer. So, it is submitted that the particulars of the insured vehicle were not disclosed by son of the Injured and mention of the Registration Number of the insured vehicle in the Charge-sheet in criminal case, is not sufficient to justify putting the liability on the Insurer. Thus, it is submitted that since the involvement of insured vehicle does not stand proved, therefore, Insurer ought to be exonerated from paying the awarded compensation.

9. On the contrary, learned counsel for the Injured refutes the aforesaid stand taken on behalf of Insurer and submits that the quantum of the compensation granted by the Tribunal is inadequate. Enhancement of compensation is sought by counsel for the Injured on the ground that the Tribunal has computed the attendant charges on conjectures as no attendant is available at a paltry salary of ₹3,500/- per month. So, it is submitted that the attendant charges ought to be calculated on minimum wages payable to a skilled worker. It is thus submitted that the *special*

diet and conveyance charges granted by the Tribunal are inadequate and they deserve to be suitably enhanced.

10. Upon hearing and on perusal of impugned Award and the evidence on record, I find that *Manish Kumar (PW-2)*, in his evidence has categorically asserted that the accident in question had taken place due to the negligence of driver of the insured vehicle and there is no cross-examination of the eye-witness *(PW-2)* on this aspect. So, the Insurer in this appeal cannot assert that there was no negligence on the part of driver of the insured vehicle. Unless a witness is confronted with the FIR, MLC etc., his/her deposition cannot be discredited. Since the Insurer has failed to do so, therefore, there is no basis to conclude that the negligence was not of the driver of the insured vehicle. Whether there is any delay in registering *FIR* or not is also aspect on which the eye-witness *(PW-2)* has not been confronted. Thus, it cannot be said that involvement of the insured vehicle does not stand proved. There is no justification whatsoever to exonerate the Insurer from paying the awarded compensation.

11. The Injured is not satisfied with the quantum of compensation granted by the Tribunal to him. The only grievance put-forth on behalf of the Injured is that the attendant charges granted by the Tribunal are wholly inadequate. The Tribunal has assessed salary of an attendant at ₹3,500/- per month. This Court is of the considered view that in the absence of any positive evidence, the salary of an attendant has to be assessed on minimum wages payable to a semi-skilled worker.

12. Considering the life span of an Injured-*Suresh*, who is in totally

vegetative state with 100% functional disability, his life span is taken to be 14 years, out of which about 8 years have already gone by. The minimum wages of a semi-skilled worker in the year 2010 were ₹5,850/- per month and in the year 2018, minimum wages of a semi-skilled worker were ₹11,362/- per month. On an average basis, the salary of a semi-skilled worker is taken to be ₹8,606/-. It is nobody's case that the medical condition of the Injured has substantially deteriorated in the last eight years and so, the Tribunal has rightly applied the multiplier of 14 to compute attendant charges. The attendant charges payable are re-assessed as under:-

₹8606/- per month X 12 X 14 = ₹14,45,808/-

13. It has come in evidence that Injured had been advised bed rest and rich protein diet. The Tribunal has erred in granting paltry compensation of ₹24,000/- under the head *"Special Diet & Conveyance"* and so, it is enhanced from ₹24,000/- to ₹50,000/-.

14. On scrutiny of the evidence on record, I find that the compensation granted by the Tribunal to the Injured under other heads is found to be adequate. Accordingly, the compensation payable to Injured-*Suresh* is re-assessed as under:-

1	Medical expenses	₹20,000/-
2	Future Medical Expenses	₹20,000/-
3	Pain & Sufferings & Enjoyment of life	₹1,00,000/-
4	Special Diet and Conveyance	₹,50,000/-
5	Attendant Charges	₹14,45,808/-
6	Loss of Income	₹1,00,100/-
7	Loss of Future Income	₹27,31,600/-
8	Loss of Amenities	₹1,00,000/-
Total		₹45,67,508/-

15. Consequently, the compensation granted to Injured-*Suresh* by the Tribunal is enhanced from ₹34,95,702/- to ₹45,67,508/-. Insurer is granted six weeks time to deposit the enhanced compensation with the Registrar General of this Court. The modified compensation shall carry interest @ 9% *per annum* and it be released forthwith to Injured-*Suresh* in the manner as indicated in the impugned Award. Statutory deposit, if any, be refunded to the Insurer.

16. The above captioned two appeals are accordingly disposed of while modifying impugned Award in aforesaid terms.

(SUNIL GAUR)
JUDGE

SEPTEMBER 28, 2018
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