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

Date of Decision: September 25, 2018

(i) + **MAC.APP. 154/2017**

ICICI LOMBARD GENERAL INSURANCE CO LTD
..... Appellant
Through: Mr. Pankaj Gupta, Advocate

Versus

GAURAV SWAROOP & ORS. ..... Respondents
Through: Mr. Kunwerpal Singh, Advocate

(ii)+ **MAC.APP. 500/2018**

GAURAV SWAROOP ..... Appellant
Through: Mr. Kunwerpal Singh, Advocate

Versus

SUNIL KUMAR & ORS. (ICICI LOMBARD GENERAL INSURANCE CO LTD) ..... Respondents
Through: Mr. Pankaj Gupta, Advocate

(iii) + **MAC.APP. 161/2017**

ICICI LOMBARD GENERAL INSURANCE CO LTD
..... Appellant
Through: Mr. Pankaj Gupta, Advocate

Versus

NADEEM CHAUDHRY & ORS. ..... Respondents
Through: Mr. Kunwerpal Singh, Advocate

(iv) + **MAC.APP. 752/2018**

NADEEM CHAUDHRY ..... Appellant

Through: Mr. Kunwerpal Singh, Advocate

Versus

SUNIL KUMAR & ORS. (ICICI LOMBARD GENERAL INSURANCE CO LTD) ..... Respondents

Through: Mr. Pankaj Gupta, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned four appeals relate to a vehicular accident, which took place on 23rd February, 2013 in which a motorcycle driver and two pillion riders were injured. Vide common impugned Award of 3rd November, 2016, compensation has been granted to Injured- *Gaurav* and *Nadeem* by the Motor Accident Claims Tribunal *(henceforth referred to as the "Tribunal")*.

2. With the consent of learned counsel for the parties, the above captioned four appeals have been heard together and are being decided together by this common judgment.

3. In the above captioned first appeal, the challenge is to the impugned Award vide which compensation of ₹5,92,561/- with interest at the rate of 12% p.a. has been granted to Injured- *Gaurav* on account of grievous injuries sustained by him in this vehicular accident. In the

above captioned third appeal, the impugned Award under challenge grants compensation of ₹27,54,114/- with interest at the rate of 12% p.a. to Injured- *Nadeem* on account of the injuries sustained by him in this vehicular accident. In the above captioned second and fourth appeals, enhancement of compensation is sought by Injured- *Gaurav* and *Nadeem*.

4. The factual background of these appeals as noticed in the impugned Awards is as under :-

> *"The facts common to both the petitions are like this. On 23.02.2013, at 1:00 p.m. petitioner Nadeem Chaudhary along with his friend Gaurav was going to his school situated at Pratap Vihar,Vijay Nagar, Ghaziabad, U.P. on motorcycle and reached at Bijli Ghar, Vijay Nagar, Ghaziabad, U.P.. They were talking to their friend Abhinav on the road side. One car bearing no. HR-51AT-0469 being driven by respondent no.1 came from wrong side in a high speed and in a rash and negligent manner and hit against motorcycle as a result all of them fell down and sustained injuries. They were removed to Ganesh Hospital, Ghaziabad. FIR no.113/13 Sr.No.198 dt. 23.02.2013 u/s 279/338/427 IPC PS, Vijay Nagar, Ghaziabad, was recorded against respondent no.1. The accident has taken place due to the rash and negligent driving of respondent no.1."*

5. To render the impugned Award, learned Tribunal has relied upon evidence of Injured persons and other evidence on record. As per Disability Certificate *(Ex. PW10/J)*, Injured- *Gaurav* had suffered temporary disability of 36% in relation to right lower limb. Whereas, as per Disability Certificate EX.PW8/1, Injured-*Nadeem* had suffered 80% permanent disability in relation to right lower limb. The Tribunal has granted lump-sum compensation of ₹50,000/- on account of *"temporary*

disability" suffered by him. On the strength of evidence recorded, impugned Award has been rendered. The breakup of compensation awarded by Tribunal to Injured-*Gaurav* is as under:-

1.	Compensation towards pain and sufferings	₹ 80,000/-
2.	Compensation towards medical bills	₹ 1,59,561/-
3.	Loss of studies during the period of treatment	₹ 1,00,000/-
4.	Attendant charges for 8 months	₹ 28,000/-
5.	Special diet and conveyance	₹ 25,000/-
6.	Compensation on account of temporary disability	₹ 50,000/-
7.	Compensation towards future medical treatment	₹ 1,50,000/-
	Total	₹ 5,92,561/-

The breakup of compensation awarded by Tribunal to Injured-*Nadeem* is as under:-

1.	Compensation towards pain and sufferings	₹1,20,000/-
2.	Compensation towards medical bills	₹3,52,614/-
3.	Loss of earning capacity due to disability	₹17,28,000/-
4.	Loss of studies	₹1,00,000/-
5.	Attendant charges for five months	₹17,500/-
6.	Special diet and conveyance	₹25,000/-
7.	Compensation towards dressing charges	₹6,000/-
8.	Compensation towards loss of amenities and enjoyment	₹80,000/-
9.	Compensation towards disfigurement	₹1,00,000/-
10.	Compensation towards loss of marriage prospects	₹1,00,000/-
11.	Compensation towards future expenses on artificial limb	₹1,25,000/-
	Total	₹27,54,114/-

6. Learned counsel for ICICI Lombard General Insurance Company Limited *(henceforth referred to as the "Insurer")* assails impugned Award on the ground of contributory negligence. It is submitted that motor cycle driver- *Nadeem* was a minor and he could not legally drive the vehicle. It is further submitted there were two pillion riders on the motor cycle in question, which is prohibited in law. It is next submitted that the functional disability of Injured-*Nadeem* is infact 40% and the Tribunal has erred in taking it to be 80%. It is also submitted that Injured-*Nadeem* was a student and the Tribunal has erred in taking his income at ₹10,000/- per month *(in lump-sum)*, whereas his notional income of ₹15,000/- per annum ought to have been taken. Counsel for Insurer submits that compensation of ₹1,25,000/- granted under the head of *"future expenses on artificial limb"* is without any basis, as no doctor has deposed regarding the future course of treatment for Injured- *Nadeem.* It is also submitted that the interest of 12% per annum payable on the awarded compensation is exorbitant and it ought to be 9% per annum. Lastly, it is submitted by counsel for Insurer that in the case of Injured-*Nadeem*, compensation granted under the non-pecuniary heads deserves to be brought in tune with Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680.

7. So far as compensation granted to Injured-*Gaurav* is concerned, it is submitted by counsel for Insurer that the impugned Award is challenged on the ground of contributory negligence and also that the

interest of 12% per annum payable on the awarded compensation is exorbitant and it ought to be 9% per annum. It is next submitted by counsel for Insurer that compensation of ₹1,50,000/- granted under the head of *"future medical treatment"* is without any basis, as no doctor has deposed regarding the future course of treatment for Injured-*Gaurav.* So, it is submitted that the compensation awarded to *Gaurav* deserves to be suitably reduced.

8. On the contrary, learned counsel for respondents-Injured 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 in the case of Injured-*Nadeem* by submitting that *"functional disability"* of Injured- *Nadeem* deserves to be taken at 100%, as he has lost his livelihood due to the injuries sustained in this accident and he has no future. It is submitted that the cost of obtaining artificial limb by Injured- *Nadeem* is more than two lacs but the Tribunal has erred in granting ₹1,25,000/- for *"future expenses of artificial limb"*. It is also submitted that the Tribunal has erred in not making any addition towards *"future prospects"* while assessing the loss of earning capacity in the case of Injured-*Nadeem.*

9. On behalf of Injured- Gaurav, it is submitted by learned counsel that compensation of ₹50,000/- granted on account of temporary disability suffered by Injured-*Gaurav* is inadequate and it deserves to be enhanced. It is pointed out that as per Certificate *(Ex. PW10/H)*, the

"future medical expenses" are of ₹2,30,970/- and the Tribunal has erred in granting compensation of ₹1,50,000/- only.

10. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that motorcycle driver- *Nadeem* was a minor and was not legally competent to drive a motor vehicle. Whether there were two pillion riders or one, is not of significance, as the aspect of motorcycle driver being a minor or of there being two pillion riders on the motorcycle, cannot by itself justify finding of contributory negligence. The manner in which this accident took place, can be gathered from the evidence of Injured persons and the Site Plan *(Ex. PW1/9)* of the place of accident. On scrutiny of aforesaid evidence, I find that negligence was of driver of the insured vehicle and there is no justification to conclude that the accident in question had taken place due to contributory negligence of the Injured. Such a view is being taken in view of a recent Supreme Court decision in *Sri Dinesh Kumar.J. @ Dinesh J Vs. National Insurance Co. Ltd. & Ors.* (2018) 1 SCC 750**.**

11. On the aspect of disability of Injured-*Nadeem*, in the face of evidence of Dr. Apoorva Aggarwal *(PW-7)*, it cannot be said that the *"functional disability"* of Injured-*Nadeem* was 40% or 100%. In the considered opinion of this Court, the Tribunal has rightly assessed the *"functional disability"* of Injured-*Nadeem* to be 80% in the light of Disability Certificate *(EX.PW8/1)*, which discloses that due to the accident in question, right lower limb of Injured-*Nadeem* was amputated. The Tribunal has also rightly taken the notional income of Injured-

Nadeem at ₹10,000/- per month while granting compensation under the head of *"loss of earning capacity"*, as Supreme Court in *V.Mekala Vs. M. Malathi & Anr.* (2014) 11 SCC 178, while dealing with the case of an injured-student, aged 16 years and having disability of 70%, has assessed his notional income at ₹10,000/- per month.

12. As regards compensation granted to Injured-*Nadeem* under the head of *"future medical expenses"* is concerned, the Tribunal has granted compensation of ₹1,25,000/- as cost of obtaining artificial limb, while ignoring the evidence of Prosthetist and Orthotist *(PW-9)*, who has given an estimate of ₹2,15,000/- *(in terms of Ex. PW1/1)* as the cost of artificial limb. It is not the case of Injured-*Nadeem* that he has obtained an artificial limb. There is no reliable estimate on record to conclude as to what would be the cost of artificial limb, and so, the facts and circumstances of this case, it is deemed appropriate not to grant any compensation under this head. Instead thereof, Insurer is directed to get the Injured-*Nadeem* examined from Safdarjung Hospital and obtain the estimate of cost of artificial limb from there or any other Agency, which is duly recognized by the Government and to ensure that cost of artificial limb is directly remitted into the bank account of the said hospital/Agency, to facilitate providing of artificial limb to Injured-*Nadeem.* Compensation granted by the Tribunal under the *'non-pecuniary heads'* and *'medical bills'* etc. is found to be just and proper and is, therefore, maintained. Pertinently, 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- *Nadeem* is to be made. No case of enhancement of compensation is made out. Accordingly, the compensation payable to injured-*Nadeem* is reassessed as under: -

1.	Compensation towards pain and sufferings	₹1,20,000/-
2.	Compensation towards medical bills	₹3,52,614/-
3.	Loss of earning capacity due to disability	₹17,28,000/-
4.	Loss of studies	₹1,00,000/-
5.	Attendant charges for five months	₹17,500/-
6.	Special diet and conveyance	₹25,000/-
7.	Compensation towards dressing charges	₹6,000/-
8.	Compensation towards loss of amenities and enjoyment	₹80,000/-
9.	Compensation towards disfigurement	₹1,00,000/-
10.	Compensation towards loss of marriage prospects	₹1,00,000/-
	Total	₹26,29,114/-

13. So far as compensation granted to Injured-*Gaurav* is concerned, I find that the Tribunal has granted compensation of ₹1,50,000/- under the head *"compensation towards future medical treatment"* on the basis of estimate Ex. PW10/H, which reveals that *"future medical expenses"* are to the tune of ₹2,30,970/-. Instead of granting the *"future medical expenses"* to Injured-*Gaurav*, it is deemed appropriate to direct Insurer to get Injured-*Gaurav* examined from a hospital on their panel and to ensure that the cost of *"future medical treatment"* is directly remitted to the concerned hospital. The compensation of ₹80,000/- granted by the

Tribunal under the head of *"pain and sufferings"* is found to be on the lower side and is accordingly enhanced to ₹1,50,000/-. However, the compensation granted to Injured-*Gaurav* under the other heads is found to be just and proper and thus, no case for enhancement of compensation is made out. Accordingly, the compensation granted to Injured- *Gaurav* is reassessed as under:-

1.	Compensation towards pain and sufferings	₹1,50,000/-
2.	Compensation towards medical bills	₹1,59,561/-
3.	Loss of studies during the period of treatment	₹1,00,000/-
4.	Attendant charges for 8 months	₹28,000/-
5.	Special diet and conveyance	₹25,000/-
6.	Compensation on account of temporary disability	₹50,000/-
	Total	₹5,12,561/-

14. Consequentially, the compensation awarded by the Tribunal to Injured-*Nadeem* stands reduced from ₹27,54,114/- to ₹26,29,114/- and compensation awarded by the Tribunal to Injured-*Gaurav* is also reduced from ₹5,92,561/- to ₹5,12,561/-. As far as rate of interest granted by the Tribunal is concerned, I find 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, the modified compensation shall carry interest @9% per annum. The awarded compensation be released to the Injured persons in the manner as indicated in the impugned Award. Statutory deposit alongwith excess

deposit, if any, be refunded to Insurer. Needless to say that expenses for *"future medical treatment"* of Injured- *Nadeem and Gaurav* shall be borne by Insurer in the manner as indicated above.

15. The above captioned four appeals are accordingly disposed of while modifying the impugned Award in the aforesaid terms.

(SUNIL GAUR)
JUDGE

SEPTEMBER 25, 2018
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