

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

Date of Decision: September 12, 2018

+ **MAC.APP. 482/2016**

THE NEW INDIA ASSURANCE CO LTD. Appellant
Through: Mr. Pankaj Seth, Advocate

versus

ISRAR AHMAD alias ISRAR KHAN AND ORS Respondents
Through: Ms. Noopur Singhal and Mr. Anil
Grover, Advocates for respondent
No.3

+ **MAC.APP. 947/2016**

HARYANA ROADWAYS FARIDABAD HARYANA THR ITS
GENERAL MANAGER Appellant
Through: Ms. Noopur Singhal and Mr. Anil
Grover, Advocates

versus

NEW INDIA ASSURANCE CO LTD & ORS Respondents
Through: Mr. Pankaj Seth, Advocate for
respondent-Insurer

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 18th March, 2016 grants compensation of ₹43,61,800/- with interest @ 9% *per annum* to injured-*Israr Ahmad @ Israr Khan*, aged 32 years, on account of grievous injuries suffered by him in a vehicular accident, which took place on 21st August, 2012.

2. In the above captioned first appeal, *New India Assurance Co Ltd. (hereinafter referred to as 'Insurer')* seeks exoneration from paying the awarded compensation, whereas in the above captioned second appeal, the owner of the insured vehicle is aggrieved by grant of recovery rights against Haryana Roadways, Faridabad. 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.

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

“Vide this judgment I shall dispose of the petition no.233/12 filed by the petitioner through his wife Smt. Rukaiya with respect to accident took place near Kali Restaurant Village Sikari, PS Ballabgarh, Sadar Distt. Faridabad, Haryana on 21.08.2012 at about 8.30 AM for which FIR no. 135/12 was registered u/s 279/338 IPC at police station Ballabgarh, Distt. Sadar, Haryana. The offending vehicle bearing registration number HR 38 R 5696 had hit the motorcycle of the injured / petitioner bearing registration number DL 9S N 2305.”

4. To render the impugned Award, Motor Accident Claims Tribunal (*hereinafter referred to as 'the Tribunal'*) has relied upon evidence of wife of *Israr Ahmad @ Israr Khan (hereinafter referred to as 'Injured')* and as per Disability Certificate (*Ex.PW2/A*), the Injured had suffered permanent disability of 85 % in relation to his whole body. On the strength of evidence recorded, impugned Award has been rendered by the Tribunal and breakup of compensation awarded is as under:-

<i>Medical expenses</i>	<i>₹36,800/-</i>
<i>Pain & Sufferings & Enjoyment of Life</i>	<i>₹2,00,000/-</i>
<i>Special Diet and Conveyance</i>	<i>₹30,000/-</i>
<i>Attendant & Future Attendant Charges</i>	<i>₹9,15,000/-</i>
<i>Loss of amenities</i>	<i>₹2,00,000/-</i>
<i>Loss of life expectancy</i>	<i>₹1,00,000/-</i>
<i>Loss of income/future income</i>	<i>₹28,80,000/-</i>
<i>Total</i>	<i>₹43,61,800/-</i>

5. Learned counsel for Insurer assails impugned Award on the ground that there is no eye-witness of this accident and the Tribunal has ignored that the owner of the insured bus has pleaded lack of negligence. It is pointed out that the Injured was not wearing helmet at the time of the accident and so, it is the case of contributory negligence. It is submitted that the quantum of compensation granted is exorbitant and it needs to be suitably reduced. It is further submitted that the Tribunal has erred in assessing the functional disability of the Injured at 100%. It is asserted by Insurer's counsel that the functional disability ought to be assessed at 40%. It is also submitted that there is no evidence that the shop which the Injured was running is now closed. It is pointed out that the income of deceased has been taken to be ₹15,000/- per month without any basis. It is also submitted by Insurer's counsel that imposition of 12% penal interest is unwarranted and it needs to be set aside. Lastly, Insurer's counsel submits that the Tribunal has rightly held that the insured vehicle was being plied without any valid Permit, but has erred in fastening the liability on the Insurer to pay the awarded compensation and then to

recover it from owner of the insured vehicle. Thus, exoneration from paying the awarded compensation is sought by Insurer.

6. In the above-captioned second appeal, the owner of insured bus submits that the bus in question was being plied on a valid Permit and the Tribunal has erred in holding that the insured bus was being plied without any valid Permit. It is submitted that the route on which the buses are being plied is required to be mentioned in the Permit and not the registration number of the bus because the buses on different routes are interchangeable, depending upon the requirement. So, it is submitted that the Tribunal has erred in granting recovery rights to Insurer against the owner of the bus in question. Attention of this Court is drawn to Sections 70, 72 and 103 of *the Motor Vehicles Act, 1988* and to Rule 120 of *the Haryana Motor Vehicles Rules, 1993* to point out that there is no requirement to mention the registration number of the bus on the Permit.

7. In rebuttal, Insurer's counsel submits that there is no plea in the written statement by the owner of the bus in question that it had valid Permit in respect of the insured vehicle in question.

8. Upon hearing and on perusal of impugned Award and the evidence on record, I find that the FIR registered regarding accident in question is on record and its bare perusal reveals that it was registered on the statement of one Anil, who had witnessed this accident. It is not in every case that an eye-witness is available. FIR of this case has been registered against the driver of the bus in question. It is settled legal position that the negligence is not required to be proved beyond reasonable doubt. In view of statement of the above-named Anil, the negligence of the driver of insured bus stands proved by preponderance of probability. The manner

of taking place of this accident, as disclosed by above-named Anil, does not reveal that there was any contributory negligence on the part of Injured. Merely because the Injured was not wearing helmet, would not justify finding of contributory negligence against him. In the considered opinion of this Court, the negligence is of the driver of bus in question in causing the accident in question. The Tribunal has rightly rendered the finding on Issue No.1 against the driver of insured bus.

9. On the quantum of compensation awarded, I find that in view of Disability Certificate of Injured, proved on record by *Dr. Laxmitej Wundavalli (PW-2)*, I find that the quality of life of Injured has been severely impaired. It can be so gathered from the evidence of *Dr. Laxmitej Wundavalli (PW-2)*. Pertinently, the evidence of *Dr. Laxmitej Wundavalli (PW-2)* remains unchallenged. The unrebutted evidence of *Dr. Laxmi Tej Wundavalli (PW-2)* is extracted as under: -

“Due to this disability, the patient is totally dependent upon other person even for his daily routines. He has to use wheel chair for toilet. He can eat only with his left hand. Due to disability, he has low average intelligence. He needs full time attendant. He has severe difficulty in working. He has difficulty in self care, interpersonal activities, communication and understanding and work also.”

10. The Injured was running an Electrical shop and as per the evidence of his wife, he was earning ₹25,000/- per month and that the Injured had studied in Senior Secondary School. No documentary proof regarding the income of Injured had been placed on record. It has come in the evidence that Injured is not in a position to run the shop and was not an Income Tax Payee, but the said shop was in a commercial space. While taking

into account the ground realities, the Income of Injured had been rightly assessed at ₹15,000/- per month. On the day of the accident, the Injured was aged 32 years and so, the applicable multiplier is of 16. The '*loss of earning capacity*' has been correctly assessed by the Tribunal.

11. So far as '*attendant charges*' are concerned, I find that the Tribunal has assessed the '*attendant charges*' while taking into account the ground realities. It was difficult to hire an attendant at a salary of ₹5,000/- per month in the year 2012, but still the Tribunal has assessed the '*attendant charges*' on the aforesaid salary, which cannot be said to be exorbitant. The compensation granted by the Tribunal under other heads is also found to be reasonable. No case for reduction in the quantum of compensation, as determined by the Tribunal, is made out.

12. On the liability aspect, I find that the Tribunal has erred in granting recovery rights to Insurer by holding that the Permit for plying the bus in question was not valid. A bare perusal of Sections 70, 72 and 103 of *the Motor Vehicles Act, 1988* and Rule 120 of *the Haryana Motor Vehicles Rules, 1993* reveals that the registration number of a vehicle is not required to be mentioned in the Permit. Only the route is required to be spelt out. This Court is of the considered opinion that the plea regarding the Permit is a legal plea and it can be taken even at the appellate stage. Since the Permit (R3WI/2) in respect of the bus in question has been found to be valid by this Court, therefore, impugned Award to the extent it grants recovery rights to Insurer, is hereby set aside. The liability to pay the awarded compensation is of Insurer and not of the owner of insured bus in question. Consequentially, the quantum of compensation, as awarded by the Tribunal, is maintained and the liability to pay the

awarded amount is put on the Insurer. The awarding of penal interest of 12% by the Tribunal is waived.

13. While entertaining the appeal by Insurer, it was directed that the entire awarded compensation with interest @ 9% *per annum* be deposited by the Insurer with the Tribunal. If it is not already done, the Insurer shall ensure that it is now done within a period of four weeks from today. The awarded compensation alongwith interest @ 9% *per annum* be disbursed forthwith to Injured in the manner already indicated in the impugned Award. Statutory deposit, if any, be refunded to Insurer.

14. These appeals are accordingly disposed of while modifying the impugned Award in aforesaid terms.

(SUNIL GAUR)
JUDGE

SEPTEMBER 12, 2018

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