

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

Date of Decision: July 30, 2018

+ **MAC. APP. 254/2013**

THE NEW INDIA ASSURANCE CO LTDAppellant
Through: Mr. Pankaj Singh Thakur,
Advocate for Mr. Sameer Nandwani, Advocate
versus

HARAK SINGH RAWAT & ORS.Respondents
Through: Mr. Aditya Gaur and Mr. Parveen
Dutt, Advocates

+ **MAC. APP. 1182/2013**

HARAK SINGH RAWAT & ORS.Appellants
Through: Mr. Aditya Gaur and Mr. Parveen
Dutt, Advocates
Versus

THE NEW INDIA ASSURANCE CO LTD AND
ANRRespondents
Through: Mr. Pankaj Singh Thakur,
Advocate for Mr. Sameer Nandwani, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 21st November, 2012 grants compensation of ₹3,56,100/- with interest @ 9% *per annum* to injured-Harak Singh, aged 39 years, on account of grievous injury suffered by him in a vehicular accident, which took place on 4th September, 2004.
2. In the above captioned first appeal, Insurer pleads lack of negligence of driver of Insured vehicle i.e. car in question and seeks

exoneration, whereas in the above captioned second appeal, enhancement of compensation is sought by Injured.

3. Since both the appeals arise out of common impugned Award, 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 04.09.04, the petitioner was coming from his office at Defence Colony to his house on a 2-wheeler scooter bearing no. DL 3S Y 1553. At about 9.00 PM when he reached near Qutab Hotel, a car make Honda City bearing no. CH 01 U 0227 being driven by respondent no. 1 at a high speed and in a rash and negligent manner came from the opposite side and hit on the right of his scooter. It thereafter collided with a DTC bus bearing no. DL 1P B 1008 which was behind the petitioner’s scooter. The petitioner fell down and sustained injuries. He was removed to Sita Ram Bhartia Institute of Science and Research where his MLC was prepared. He was thereafter, transferred to Indian Spinal Injuries Centre. A case was registered vide FIR 446/04 at the police station Hauz Khas. The petitioner was 39 years of age. He used to work with AZ Datamal (Pvt.) Ltd. and get salary of Rs. 12,000/- p.m. Respondent no. 3 was the owner of the Honda City car. Respondent no. 2 was the driver of the DTC bus which was owned by respondent no. 4. Respondent no. 5 was the insurer of the Honda City car.”

5. To render the impugned Award, Motor Accident Claims Tribunal (hereinafter referred to as “the Tribunal”) has relied upon evidence of

injured and other documentary evidence on record. The breakup of compensation awarded by the Tribunal is as under:-

Medical expenses	₹ 2,87,000/-
Pain and sufferings and Enjoyment of Life	₹ 30,000/-
Special Diet, Conveyance & Attendant	₹ 19,000/-
Loss of Income	₹ 20,100/-
Total	₹ 3,56,100/-

6. Learned counsel for Insurer assails impugned Award on the ground that there was no negligence on the part of driver of insured car. To submit so, it is pointed out that the initial version of the Injured is on the fact that the accident in the question had taken place due to negligence of the DTC bus driver. It is submitted that the charge-sheet has been filed against the driver of the DTC bus and so, Insurer ought to be exonerated from paying the awarded compensation. In the alternative, it is submitted that at best it is the case of contributory negligence of DTC bus driver and driver of the insured car. So, it is submitted that the impugned Award deserves to be set aside *qua* Insurer.

7. On the contrary, learned counsel for Injured supports the impugned Award and submits that the quantum of compensation granted is inadequate and needs to be enhanced. Attention of this Court is drawn to Salary Certificate (*Ex. PW1/Q*) to submit that on the day of the accident, Injured was drawing salary of ₹12,000/- per month and the Tribunal has erred in observing that no document regarding income of the Injured has been placed on record. So, it is submitted that the compensation on account of '*loss of income*' is required to be reassessed in light of the

aforesaid Salary Certificate. It is pointed out by learned counsel for Injured that Injured had remained in hospital for twenty days and was bed-ridden for about nine months and so, the compensation granted under the “*non pecuniary heads*” ought to be suitably enhanced.

8. Upon hearing and on perusal of impugned Award and the evidence on record, I find that Injured (*PW-1*) in his cross-examination has categorically deposed that the insured car was coming from the front side at high speed and hit the right side of the scooter and the DTC bus was behind injured’s scooter. The injured has denied the suggestion that his scooter was hit by the DTC bus. In view thereof, I find that no case for grant of recovery rights to the insurer is made out.

9. In view of the evidence of injured (*PW 1*), the site plan of the spot i.e. the place of accident (*Ex. PW 1/B*), I find that it is a case of head-on collision and the negligence was of driver of insured vehicle. From the evidence on record, plea of contributory negligence does not stand substantiated. What has been said during the course of police investigation, has not been put to the injured in the cross-examination and so, on this ground no benefits accrues to the Insurer. The ‘*Mechanical Inspection Report*’ on record supports the findings returned by the Tribunal on the negligence aspect.

10. As regards the “*loss of income*”, I find that the Tribunal has erred in not relying upon the Salary Certificate (*Ex PW 1/Q*) as this certificate remains unchallenged in cross-examination of the injured. In the face of the aforesaid Salary Certificate, the compensation payable on account of “*loss of income*”, is reassessed as under:-

$$₹12,000/- \times 6 = ₹72,000/-$$

11. The compensation granted by the Tribunal under the head “*pain and sufferings & enjoyment of life*” needs to be properly assessed as the injured had remained bed ridden for a period of six months due to the injury sustained in this accident. In face of evidence on record, the compensation under head of “*pain and suffering*” granted to Injured is enhanced from ₹30,000/- to ₹50,000/-. Accordingly, the compensation payable to Injured is reassessed as under: -

Loss of Income	₹72,000/-
Medical expenses	₹2,87,000/-
Special diet etc.	₹19,000/-
Pain and suffering	₹50,000/-
Total	₹4,28,000/-

12. Consequentially, the compensation awarded by the Tribunal stands enhanced from ₹3,56,100/- to ₹4,28,000/- with interest @ 9% per annum. The enhanced compensation be deposited by Insurer with the Registrar General of this Court within six weeks from today. The enhanced compensation be disbursed in the manner as indicated in the impugned Award. Statutory deposit, if any, be refunded to Insurer.

13. With aforesaid directions, both these appeals are accordingly disposed of.

(SUNIL GAUR)
JUDGE

JULY 11, 2018

v