

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

Date of Decision: September 20, 2018

+ **MAC.APP. 345/2017**

TATA AIG GENERAL INSURANCE COMPANY LIMITED

.....Appellant

Through: Mr. Sameer Nandwani, Advocate

Versus

CHANDER MAITRA & ORS.

.....Respondents

Through: Mr. Yogesh Kumar Narula,
Advocate

+ **MAC.APP. 407/2017**

CHANDER MAITRA

.....Appellant

Through: Mr. Yogesh Kumar Narula,
Advocate

Versus

**BHAGWAT SINGH & ORS. (TATA AIG GENERAL
INSURANCE COMPANY LIMITED)**

.....Respondents

Through: Mr. Sameer Nanadwani, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 13th January, 2017 grants compensation of ₹15,51,000/- with interest @8% per annum to *Chander Maitra* (*hereinafter referred to as the "Injured"*), aged 27 years, on account of

grievous injuries suffered by him in a vehicular accident, which took place on 8th September, 2015.

2. In the above captioned first appeal, TATA AIG General Insurance Company Limited (*henceforth referred to as the “Insurer”*) seeks reduction in the quantum of compensation awarded, whereas in the above captioned second appeal, enhancement of compensation is sought by Injured-*Chander Maitra*.

3. Since both the appeals arise out of common impugned judgment, 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. The factual background of this case, as noticed in the impugned Award, is as under:-

“Vide this judgment I shall dispose of the DAR with respect to the road accident occurred on 08.09.2015 at about 02:00 PM at 5th Avenue, Band Road, Gadaipur, New Delhi 5:16 PM in front of Jain Mandir, Chhattarpur, due to rash and negligent driving of the vehicle bearing no. DL 2CAT 3276 wherein Sh. Chandra Maitra sustained injuries and a case FIR bearing No.652/15, was registered at PS Fateh Pur Beri, New Delhi.”

4. To render the impugned Award, Motor Accident Claims Tribunal (*hereinafter referred to as the “Tribunal”*) has relied upon evidence of Injured-*Chander Maitra* (PW-1) and as per Disability Certificate (Ex.PW3/A), the Injured had suffered permanent disability of 30% in relation to his visual disability. On the strength of evidence recorded,

impugned Award has been rendered. The breakup of compensation awarded by Tribunal to the Injured is as under:-

1.	Medical Expenses on actuals	₹42,000/-
2.	Pain and Suffering	₹1,00,000/-
3.	Special diet (₹10,000), Conveyance (₹5,000)	₹15,000/-
4.	Future Loss of income	₹11,93,400/-
5.	Loss of Amenities	₹2,00,000/-
	Total	₹15,50,400/- (which is rounded off to ₹15,51,000/-)

5. Learned counsel for Insurer assails impugned Award on the ground that the Tribunal has erroneously assessed the “*functional disability*” of the Injured on the basis of Disability Certificate (Ex.PW3/A) and has not considered the actual disability suffered. It is submitted that the “*functional disability*” ought to be assessed at 10%. It is further submitted that the compensation granted under the heads of ‘*loss of amenities of life*’ and “*pain and suffering*” is exorbitant and it needs to be reduced.

6. On the other hand, learned counsel for Injured-*Chander Maitra* 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 50% towards “*future prospects*” ought to be made. It is submitted that the compensation granted by the Tribunal

under the ‘*non pecuniary heads*’ is also inadequate and is required to be suitably enhanced. Reliance is placed upon Supreme Court’s decision in Civil Appeal No. 6071/2018 *Shashi Chandan Vs. Ramesh Chander & Anr.*, rendered on 5th July, 2018.

7. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that the Injured was working as a Office Boy with *M/s Jaskaran Singh* and was earning ₹19,500/- per month and due to the injuries suffered by him in this accident, he had lost one eye and vision in the other eye was also affected up to 30%. The Tribunal has assessed the “*functional disability*” of Injured at 30%, whereas Dr. Poonam (PW-3) in her evidence on record has stated that the vision of Injured in the other eye is 6X6 with glasses and Injured would not have any problem in doing table work, arranging files etc. and he can drive and do field work. In the face of afore-referred evidence of Dr. Poonam (PW-3), the Tribunal was not justified in assessing the “*functional disability*” of Injured at 30%. In the considered opinion of this Court, the “*functional disability*” of the Injured deserves to be assessed at 15%. Accordingly, the “*loss of earning capacity*” of Injured is re-assessed as under:-

$$₹19,500/- \times 12 \times 17 \times 15/100 = ₹5,96,700/-$$

8. As regards grant of “*future prospects*” in a case of injury is concerned, Supreme Court in *Shashi (Supra)*, has made addition towards “*future prospects*” while relying upon Supreme Court’s Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680. Another Bench of Supreme Court while dealing

with the case of injury in *Anant son of Sidheshwar Dukre Vs. Pratap son of Zhamnnappa Lamzane & Anr.* 2018 (10) SCALE 130, has not made any addition towards “*future prospects*”. It is a matter of record that Supreme Court’s Constitution Bench decision in *Pranay Sethi (Supra)*, has not dealt with injury case and therefore, this Court is not inclined to grant any addition towards “*future prospects*”.

9. With regard to compensation granted under the head of “*loss of amenities of life*”, I find that the compensation granted under this head is neither exorbitant nor inadequate and is infact, just and proper. Compensation granted under the other heads is also adequate. No case for enhancement of compensation awarded is made out. Accordingly, the compensation payable to Injured-*Chander Maitra* is re-assessed as under:-

1.	Medical Expenses on actuals	₹42,000/-
2.	Pain and Suffering	₹1,00,000/-
3.	Special diet (₹10,000), Conveyance (₹5,000)	₹15,000/-
4.	Loss of earning capacity	₹5,96,700/-
5.	Loss of Amenities	₹2,00,000/-
	Total	₹9,53,700/-

10. Consequentially, the compensation awarded by the Tribunal to Injured-*Chander Maitra* stands reduced from ₹15,51,000/- to ₹9,53,700/-. As far as interest granted by the Tribunal is concerned, 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

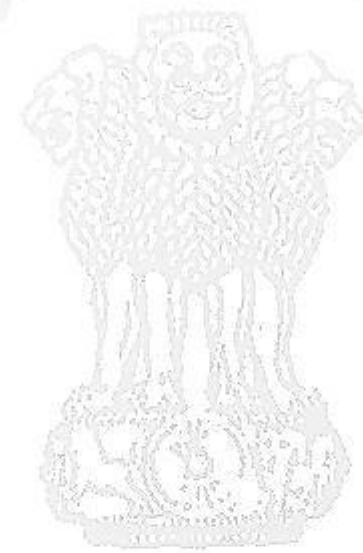
awarded compensation and so, in the instant case, it is directed that the re-assessed compensation shall carry interest @ 9% *per annum* and it be released forthwith to Injured-*Chander Maitra* in the manner, as indicated in the impugned Award. Statutory deposit alongwith excess deposit, be refunded to the Insurer.

11. With aforesaid modification in the impugned Award, the above captioned two appeals are disposed of.

(SUNIL GAUR)
JUDGE

SEPTEMBER 20, 2018

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