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

Date of Decision: October 11, 2018

\+ **MAC.APP. 475/2017**

TATA AIG GENERAL INSURANCE CO LTD ..... Appellant

Through: Mr. Rudra Kahlon and Ms. Vandana Kahlon, Advocates

versus

SHYAM @ DEEPAK AND ORS .....Respondents

Through: Mr. S.N.Parashar, Advocate for respondent-Claimant

\+ **MAC.APP. 1059/2017**

SHYAM @ DEEPAK ..... Appellant

Through: Mr. S.N.Parashar, Advocate

versus

RAVI KUMAR & ORS (TATA AIG GEN INS CO LTD) .....Respondents

Through: Mr. Rudra Kahlon and Ms. Vandana Kahlon, Advocates for respondent-Insurer

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 14th February, 2017 grants compensation of ₹4,35,462/- with interest @12% *per annum* to injured-*Shyam @ Deepak(hereinafter referred to as 'Injured')* aged 32 years, on account of grievous injuries suffered by him in a vehicular accident, which took place on 22nd November, 2011.

2. In the above-captioned first appeal, *TATA AIG General Insurance*

Co. Ltd. (hereinafter referred to as 'Insurer') seeks exoneration from paying the awarded compensation while disputing the involvement of insured vehicle in the accident in question. A challenge is also made by Insurer's counsel to grant of interest @12% *per annum* on the awarded compensation. Whereas, in the above-captioned second appeal, enhancement of compensation is sought by Injured. 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:-

> *"Briefly the facts of the case are that on 22.11.11, the petitioner was coming back from the marriage of his cousin from Timarpur to his home via Khajuri pusta while driving his motorcycle bearing no. DL 4S AS 0276. When he reached at 3-1/2 Pusta, New Usmanpur at about 12:30 am (night), he was hit by Santro Car bearing registration No. DL 8 CN 9145 which was being driven by its driver / respondent No.1 in a very high speed, rashly and negligently, coming from the back side of the petitioner. The petitioner fell down and sustained multiple injuries and thereafter become unconscious. Later on in the hospital, the petitioner lost his one eye vision. He was shifted to Ganga Ram Hospital. As contended, the petitioner was working as property dealer and earned about Rs.12,000/- p.m."*

4. To render the impugned Award, Motor Accident Claims Tribunal *(hereinafter referred to as the "Tribunal")* has relied upon evidence of

Injured and as per Disability Certificate *(Ex.PW1/15)*, Injured had suffered permanent disability to the extent of 30% in relation to left eye. On the strength of evidence recorded, impugned Award has been rendered by the Tribunal. The breakup of compensation awarded to Injured by the Tribunal is as under:-

1.	*Compensation towards pain and suffering*	*₹2,00,000/-*
2.	*Compensation towards amenities of life*	*₹50,000/-*
3.	*Loss of future income due to disability*	*Nil*
4.	*Towards Servant/Attendant Charges*	*₹25,000/-*
5.	*Towards conveyance & Special diet*	*₹40,000/-*
6.	*Towards medical bills*	*₹80,526/-*
7.	*Towards loss of Wages*	*₹39,936/-*
	Total	***₹4,35,462/-***

5. Learned counsel for Insurer assails impugned Award on the ground that involvement of insured vehicle in causing the accident in question does not stand proved. Attention of this Court is drawn to the *Mechanical Inspection Report* of insured car to point out that there was no damage to the insured vehicle. Reliance is sought to be placed by Insurer's counsel upon police statement of a Tea-Vendor to submit that at the time of accident, it was pitch-dark and so, it was not possible for Injured to have noted the registration number of the insured vehicle. It is pointed out that *Dr. Rajiv Sharma* in his evidence has deposed that the injuries sustained by Injured were sufficient to cause immediate loss of consciousness and so, the possibility of Injured noting down the registration number of the

insured vehicle is ruled out. It is submitted by Insurer's counsel that Injured had not made any phone call from his mobile after this accident and he did not disclose where he had noted down the registration number of the insured vehicle. It is also pointed out that after 47 days of this accident, the registration number of the insured vehicle has been disclosed by Injured to the police. So, it is submitted that liability to pay the awarded compensation is not of Insurer.

6. On the contrary, learned counsel for 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 by learned counsel for Injured on the ground that the Tribunal has erred in not granting *'loss of future income due to disability'*. It is submitted that the medical bills of ₹5,94,251/- were placed on record, but the Tribunal has erred in granting medical expenses to the tune of ₹80,000/- only. It is pointed out that in Reply to the claim petition, the stand taken by owner of insured car is that driver of the insured car was not negligent. It is also pointed out that Notice under Section 133 of *the Motor Vehicles Act, 1988 (Ex.PW1/11)* was served upon owner of the insured vehicle and in the Reply, he has admitted that the insured vehicle was involved in this accident and after this accident, he got it repaired.

7. Attention of this Court is drawn by learned counsel for Injured to evidence of *Dr.R.K.Sharma (PW-2)* and *Dr. Anshul Gupta (PW-3)* to point out that Injured could have noted the registration number of insured vehicle immediately after the accident as he was conscious for ten

minutes. So, it is submitted that the compensation granted by the Tribunal is on lower side and it needs to be suitably enhanced.

8. Upon hearing and on perusal of impugned Award and the evidence on record, I find that owner of insured car in the Reply to the claim petition of Injured, has stated that the accident in question had taken place due to negligence of Injured and so, the owner is not liable to pay the awarded compensation. It is also stated in the Reply by owner of insured vehicle that the compensation claimed is highly excessive.

9. On the aspect of involvement of insured vehicle in the accident in question, I find that there is no worthwhile cross-examination of Injured. Rather, it has surfaced in the cross-examination of Injured that insured vehicle had come from behind and left side of the insured vehicle had struck against the rear-side of the motorcycle, which was being driven by Injured. It has been categorically stated by Injured that he had remained conscious for about ten minutes after the accident and driver of insured vehicle had stopped the vehicle at a distance of 8 to 10 steps and then had reversed the car and stopped near Injured and had stepped out of his car to see the condition of Injured and thereafter, driver of insured vehicle had fled away. Injured in his evidence had stated that the insured vehicle was Santro car of white colour. There is no cross-examination on the aspect of registration number of insured car. Evidence of *Dr. Anshul Gupta (PW-3)* regarding the capacity of Injured to remember what had happened immediately after the accident in question is not categoric. *Dr. R.K. Sharma (PW-2)* in his evidence has deposed that it is nowhere mentioned in the discharge summary of Injured that Injured had lost his memory after this accident. However, it has come in the evidence of this

witness *(PW-2)* that Injured had remained unconscious for more than 48 hours of this accident. How the Injured could have noted down the registration number of insured car or where Injured had noted down the registration number of insured car, has not been brought out in the cross-examination of Injured.

10. The *Mechanical Inspection Report* of insured vehicle may not disclose any damage, but this by itself is not of any consequence because driver of insured vehicle has not been got examined to demolish the version of Injured, who had, in no uncertain terms, deposed that the accident in question was caused by driver of insured vehicle. Undisputedly, *Ravi* was the driver of the insured vehicle. In view of foregoing narration, this Court is of the considered view that since there is no effective cross-examination of Injured on the aspect of involvement of insured vehicle in the accident in question, therefore, the Insurer cannot be absolved from the liability to pay the awarded compensation.

11. On the aspect of quantum of compensation granted to Injured by the Tribunal, I find that the Tribunal has assessed the *'loss of wages'* while relying upon the minimum wages for unskilled worker because no evidence was led by Injured on the income aspect. To say the least, it remains beyond dispute that Injured was driving the motorcycle when this accident took place. So, income of Injured has to be assessed on minimum wages payable to a skilled worker, which, at the relevant time, were ₹8,112/- per month. Hence, *'loss of wages'* payable to Injured for a period of six months is re-assessed as under:-

₹8,112/- per month X 6 = ₹48,672/-

12. Addition of 40% is made towards *'future prospects'* in view of Supreme Court's Three Judge Bench decision in *Jagdish v. Mohan and Others,* (2018) 4 SCC 571. Injured was aged 32 years on the day of the accident and so, applicable multiplier is of 16. Insofar as assessment of functional disability of Injured is concerned, I find that since Injured has lost vision in his left eye to the extent of 30%, therefore, the Tribunal has rightly assessed the functional disability of Injured at 30%. Accordingly, the *"loss of earning capacity"* of Injured is re-assessed as under:-

₹8,112/- X 12 X 16 X 140/100 X 30/100 = ₹6,54,151.68/-
(rounded off to ₹6,54,152/-)

13. As regards *'medical expenses'*, I find that the Tribunal has granted *'medical expenses'* of ₹80,526/-. However, there are medical bills on record to the tune of ₹5,94,251/-. In the face of documentary evidence in the shape of medical bills, Injured is entitled to and is granted *'medical expenses'* of ₹5,94,251/-. Regarding compensation granted by the Tribunal to Injured under *'non pecuniary heads'* is concerned, I find it to be just and fair and it is accordingly maintained. Thus, no case for enhancement of compensation under the *'non pecuniary heads'* is made out.

14. In view of above, the compensation payable to Injured is reassessed as under: -

1.	Compensation towards pain and suffering	₹2,00,000/-
2.	Compensation towards amenities of life	₹ 50,000/-
3.	Loss of earning capacity	₹6,54,152/-
4.	Towards Servant/ Attendant Charges	₹ 25,000/-

5.	Towards conveyance & Special diet	₹ 40,000/-
6.	Towards medical bills	₹ 5,94,251/-
7.	Towards loss of Wages	₹48,672/-
	Total	**₹ 16,12,075/-**

15. Consequentially, the compensation payable to Injured stands enhanced from ₹4,35,462/- to ₹16,12,075/-. Interest @12% *per annum* granted on the awarded compensation by the Tribunal is set aside as 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*. The modified compensation alongwith interest @ 9% *per annum* be deposited by Insurer with the Tribunal within six weeks from today. The reassessed compensation be released forthwith to Injured in the manner as indicated in the impugned Award. Statutory deposit, if any, be refunded to Insurer.

16. While modifying the impugned Award in aforesaid terms, the above captioned two appeals are accordingly disposed of.

(SUNIL GAUR)
JUDGE

OCTOBER 11, 2018
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