

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

Date of Decision: July 17, 2018

+ **MAC.APP. 493/2015**

SHRIRAM GENERAL INSURANCE CO LTD. Appellant
Through: Mr.Sameer Nandwani, Advocate

Versus

RAJA & ORS. Respondents
Through: Mr. Sanjeev Mehta, Advocate

+ **MAC.APP. 395/2018**

RAJA & ORS. Appellants
Through: Mr.Sameer Nandwani, Advocate

versus

SHRIRAM GENERAL INSURANCE CO LTD. Respondents
Through: Mr. Sanjeev Mehta, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 24th April, 2015 grants compensation of ₹24,91,300/- with interest @ 9% per annum to respondent/ Injured- *Raja*, aged 31 years, on account of grievous injury suffered by him in a vehicular accident, which took place on 24th October, 2011.

2. In the above captioned first appeal, Insurer seeks reduction of the compensation awarded, whereas in the above captioned second appeal,

enhancement of compensation is sought by claimants. 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.

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

“The case of the petitioner is that on 24/10/2011 at about 11.00 PM the petitioner was coming with his brother in law from his house and when they reached at Sadar Thana Road suddenly a Truck bearing No. HR-55A-6312 which was being driven by its driver/respondent No. 1 came at a very high speed in rash and negligent manner, in violation of all traffic rules and norms and hit the petitioner from behind with forceful impact. As a result of aforesaid accident, the petitioner sustained straddle fracture pelvic bone, sustained serious injury in rectal wall and urethral injury and other grievous injuries all over his body as per MLC and other medical record. In total, the petitioner has claimed Rs.50,00,000/- as compensation on account of the injuries sustained by the injured in the accident.”

4. To render the impugned Award, Motor Accident Claims Tribunal (hereinafter referred to as the “Tribunal”) has relied upon evidence of Injured- Raja (PW-1), eye witness (PW2), Sh. Jitin Sohar (PW-3), Dr. Satish Kumar (PW-5) and Disability Certificate (Ex. PW5/A) and has opined that the Injured had suffered 100% “permanent disability” and “functional disability” is also assessed at 100%. On the strength of evidence recorded, impugned Award has been rendered. The breakup of compensation awarded by Tribunal is as under:-

Loss of earning capacity	₹19,16,928/-
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Pain and suffering	₹1,50,000/-
Loss of amenities	₹1,50,000/-
Disfigurement and loss of enjoyment	₹1,00,000/-
Special diet upto the date of Award ₹25,000/- Conveyance upto the date of Award	₹50,000/-
Compensation towards medical bills	₹ 24,372/-
Future conveyance	₹50,000/-
Future special diet	₹50,000/-
Total	₹24,91,300/-

5. Learned counsel for Insurer assails impugned Award on the ground that the Tribunal has erred in not taking the “*functional disability*” to be 100%, whereas in view of Disability Certificate (*Ex. PW5/A*), it should be 60%. It is submitted by counsel for Insurer that in view of Supreme Court’s Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680, addition towards “*future prospects*” ought to be 40% and not 50% as awarded by the Tribunal. Counsel for Insurer submits that there is no head of “*future conveyance*” and “*future special diet*” and so, compensation granted by the Tribunal under these two heads ought to be disallowed. Lastly, counsel for Insurer submits that the compensation awarded deserves to be reduced.

6. On the contrary, counsel for Injured refutes the aforesaid stand taken by Insurer’s counsel and submits that compensation granted is inadequate and seeks enhancement of compensation. Counsel for Injured submits that in view of 100% “*permanent disability*” of Injured,

“*attendant charges*” ought to have been granted. It is submitted by counsel for Injured that compensation granted under the head of “*pain and suffering*” is inadequate. Counsel for Injured relies upon Supreme Court’s decision in *G. Ravindranath Vs. E. Srinivas and anr.* 2013 ACJ 2131 to seek compensation under the head “*future medical expenses*” as due to disability suffered by the Injured, recurring medical expenses have to be incurred. It is submitted by counsel for injured that no compensation under the head of “*loss of expectation of life*” has been granted. Learned counsel for injured relies upon a decision of 29th January, 2008 of a Coordinate Bench of this Court in FAO 388-89/2005, titled as *Mr. Maman Chand & Anr. Vs. Deputy Labour Commissioner & anr.* to submit that in petty and unorganized business, the employer neither issues any appointment letter to its employees nor do they maintain any record. So, evidence of Injured’s employer ought to have been accepted by the Tribunal to assess the income of Injured at ₹20,000/- p.m. and it cannot be taken on minimum wages of unskilled worker.

7. Counsel for Injured submits that since no permission under Section 170 of *The Motor Vehicle Act, 1988* has been taken by the Insurer, so, challenge to the quantum of compensation granted cannot be made by the Insurer. To submit so, reliance is placed upon Supreme Court’s decisions in *National Insurance Co. Ltd. Vs. Nicolletta Rohtagi & ors.* 2002 ACJ 1950 and *Central Board of Dawoodi Bohra Community & anr. Vs. State of Maharashtra & anr.* (2005) 2 SCC 673 to submit that decisions rendered earlier by co-equal Bench will prevail. Lastly, it is submitted by counsel for Injured that compensation granted to Injured deserves to be enhanced.

8. In rebuttal, reliance is placed by counsel for Insurer upon Supreme Court's decision in *United India Insurance Co. Ltd. Vs. Shila Datta & ors.* 2011 ACJ 2729 to submit that where the Insurer has been already made a party, there is no requirement of seeking permission under Section 170 of the *Motor Vehicles Act, 1988*.

9. Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that decision in *Nicolletta Rohtagi (supra)* has been referred to a larger Bench and in view thereof, reliance is placed upon decision in *Shila Datta (supra)*, wherein it is held that once the Insurer is impleaded as a party, then it can raise all contentions available to resist the claim. Quite evidently, in such a situation, no permission under Section 170 of the *Motor Vehicles Act, 1988* is required. It is so said because in light of decision in *Shila Datta (supra)*, wherein earlier decision in *Nicolletta Rohtagi (supra)* has been considered and the matter has been referred to a larger Bench. Pertinently, in the instant case, owner and driver of the offending vehicle in question have not come forward to contest the claim before the Tribunal or in appeal. In such a situation, Insurer is well within its right to assail the impugned Award on quantum aspect.

10. The Disability Certificate (*Ex. PW5/A*) assesses the permanent disability of Injured at 100% and the Tribunal on its basis has mechanically assessed the "*functional disability*" to be 100%, which according to this Court is not justified, as Dr. Satish Kumar (*PW-5*) in his evidence has categorically deposed that upper and lower limbs of Injured are fully working and he can do minor sitting jobs with both his hands. According to this witness- Dr. Satish Kumar (*PW-5*), disability suffered

by Injured has no effect on his mind, eyes or any other part of the body, except for difficulty in passing urine and stool. However, this witness-*Dr. Satish Kumar (PW-5)* has deposed in no uncertain terms that 100% permanent disability is in relation to the whole body because of the conditions mentioned in the Disability Certificate (*Ex. PW5/A*) and that the injured has lost his day to day working as well as earning capacity and is rendered impotent due to the injuries sustained in this accident. It has also come in the evidence of *Dr. Satish Kumar (PW-5)* that injured needs multiple operations in a specialized hospital. In the face of evidence of *Dr. Satish Kumar (PW-5)*, it is deemed appropriate to assess the “functional disability” of Injured to be 80%.

11. As regards income of Injured is concerned, there is self serving evidence of Injured’s employer i.e. *Sh. Jitin Sohar (PW-3)*, who has asserted that the injured used to earn ₹700/- to ₹1,000/- per day by selling button etc. *Rajesh (PW-4)*, in his evidence has deposed that the Injured was working with him on part time basis and for the job work done by him, Injured was getting ₹300/- to ₹400/- per day. However, there is nothing on record as to what kind of work *Jitin (PW-3)* & *Rajesh (PW-4)* were doing. No shop registration certificate, pan card etc. has been placed on record by *Jitin (PW-3)* & *Rajesh (PW-4)*. It is not the case that *Jitin (PW-3)* & *Rajesh (PW-4)* were in non-organized sector and so, reliance placed upon decision in *Maman Chand (supra)*, is of no avail.

12. In the considered opinion of this Court, the Tribunal has rightly assessed the income of Injured on minimum wages payable to an unskilled worker. However, in light of Supreme Court’s Constitution Bench decision in *Pranay Sethi (Supra)*, addition towards “future

prospects” has to be 40% and not 50%, as granted by the Tribunal. There is no basis to grant any compensation under the head of “*future conveyance*” and “*future special diet*” and so, compensation granted under these heads is set aside. In the instant case, there is no basis to grant compensation under the head “*loss of expectation of life*”.

13. Supreme Court in *G. Ravindranath (supra)*, while dealing with the case of a 19 year old boy, who was rendered impotent due to the injuries sustained by him, has awarded compensation of ₹3,00,000/- under the head of “*pain and sufferings*” and another sum of ₹4,00,000/- under the head of “*loss of amenities of life and prospects of marriage*”. Considering that Injured in the instant case was aged 31 years and was married on the day of the accident, I find that the compensation of ₹1,50,000/- granted under the head of “*pain and suffering*” is on lower side and so, it is deemed appropriate to enhance it to ₹2,00,000/-. On account of Injured becoming impotent, due to the injuries sustained in this accident, compensation granted under the head of “*loss of amenities of life*” ought to commensurate with the damage suffered. The compensation of ₹1,50,000/- awarded under the head of “*loss of amenities of life*” is wholly inadequate and so, in face of evidence on record, it is enhanced to ₹3,00,000/-. The compensation granted under other heads is found to be adequate.

14. However, in view of evidence of Dr. Satish (PW-5), compensation under the head “*future medical expenses*” ought to be granted. The Tribunal has failed to do so, despite the fact that the Injured needs multiple operations in future in specialized hospital. It is not feasible to now assess as to what would be the future medical expenses, and instead

thereof, it is directed that Insurer shall promptly remit “*future medical expenses*” to the concerned hospital directly, upon submission of the requisite documents.

15. In light of aforesaid, “*loss of earning capacity*” is reassessed as under:-

$$₹6,656/- \times 12 \times 16 \times 140/100 \times 80/100 = ₹14,31,306/-$$

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

Loss of earning capacity	₹14,31,306/-
Pain and suffering	₹2,00,000/-
Loss of amenities	₹3,00,000/-
Disfigurement	₹1,00,000/-
Special diet and conveyance upto the date of Award	₹50,000/-
Compensation towards medical bills	₹ 24,372/-
Total	₹21,05,678/-

17. Consequentially, the compensation amount payable stands reduced from ₹24,91,300/- to ₹21,05,678/-. The modified compensation be disbursed in the ratio and manner as indicated in the impugned Award. Statutory deposit along with excess deposit, be refunded to Insurer.

18. With aforesaid directions, the above captioned appeals are accordingly disposed of.

(SUNIL GAUR)
JUDGE

JULY 17, 2018

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