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

Date of Decision: July 19, 2018

\+ **MAC.APP. 730/2017 & CM Nos. 29415/2017 & 29417/2017**

SHRIRAM GENERAL INSURANCE CO. LTD. ..... Appellant

Through: Mr. Sameer Nandwani, Ms. Smritee Relan and Mr. Mohd. Shakim, Advocates

Versus

RAJ KUMAR VERMA & ORS. ..... Respondents

Through: Mr. Varun Sarin, Advocate

\+ **MAC.APP. 776/2017**

RAJ KUMAR VERMA ..... Appellant

Through: Mr. Varun Sarin, Advocate

Versus

BALWANT SINGH & ORS (SHRIRAM GENERAL INSURANCE CO. LTD.) ..... Respondents

Through: Mr. Sameer Nandwani, Ms. Smritee Relan and Mr. Mohd. Shakim, Advocates for R-3

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. The above captioned two appeals arise out of common impugned Award of 3rd May, 2017. In the above captioned first appeal, the Insurer assails the impugned Award to seek exoneration from the liability to pay compensation awarded by the Tribunal, whereas in the above captioned second appeal, enhancement in the quantum of compensation is sought by

the Injured. With the consent of learned counsel for the parties, the above captioned two appeals have been heard together and are being decided together by this common judgment.

2. Impugned Award grants compensation of ₹8,39,026/- with interest @ 9% per annum to injured-*Raj Kumar,* aged 21 years, on account of grievous injury suffered by him in a vehicular accident, which took place on 7th January, 2014. The facts as noticed in the impugned Award are as under:-

> *"Brief facts of the case are that on 07.01.2014 at about 09:00 PM, petitioner was travelling in truck bearing registration No. UP-25AT-6887 which was driven by respondent No. 1 with high speed and in reckless manner. Petitioner warned respondent No. 1 not to drive above-said truck in reckless manner, but he kept on driving the truck with high speed and reckless manner. When above-said truck reached near Village Shahi on Bareilly-Pilibhit Road, respondent No. 1 lost control and collided with another truck from behind."*

3. To render the impugned Award, learned Motor Accident Claims Tribunal *(hereinafter referred to as the "Tribunal")* has relied upon evidence of injured and as per disability certificate, injured had sustained disability of 78% in relation to bilateral lower limbs. On the strength of evidence recorded, impugned Award has been rendered. The breakup of compensation awarded by Tribunal is as under:-

Head of Compensation	Amount(in ₹)
Compensation for Medical Expenses	₹ 1,40,000/-
Compensation for Pain & Suffering	₹ 40,000/-
Compensation for Special Diet, Attendant and Conveyance	₹ 30,000/-
Loss of future earning capacity/ future income	₹ 5,54,980/-
Compensation for loss of amenities and enjoyment of life	₹ 10,000/-
Compensation for disfigurement	₹ 20,000/-
Loss of income during treatment	₹ 44,046/-
Total	₹ 8,39,026 /-

4. Learned counsel for Insurer assails impugned Award on the ground that the presence of the Injured at the spot is disputed and so, Insurer claims immunity from paying the awarded compensation. Learned counsel for Insurer submits that there is no mention of the injured in the FIR and the charge-sheet and even in the medical documents, it is not mentioned that injured had suffered the injuries in a road accident. It is also submitted by learned counsel for Insurer that the injured was a gratuitous passenger and so Insurer is not liable to pay the awarded compensation. It is pointed out that there is no documentary evidence regarding injured having purchased any goods and so the Insurer has no liability to pay the awarded compensation.

5. On the contrary, learned counsel for respondent-Injured submits that the Tribunal has granted compensation which is wholly inadequate and thus, enhancement of compensation is sought by counsel for Injured by pointing out that no addition towards future prospects has been made

by the Tribunal and functional disability has been assessed by the Tribunal at 35%, which is on the lower side. It is submitted by counsel for Injured that compensation granted under '*non-pecuniary heads*' is meager and so, it needs to be substantially enhanced.

6. Upon hearing and on perusal of impugned Award and the evidence on record, I find that discharge summary of the Injured was issued by a government hospital and therein it is clearly recorded that it is a case of RTA i.e. Road Traffic Accident. So, the presence of injured at the time and place of accident cannot be disputed because his name does not appear in the police report regarding this accident. It is so said because there is no cross-examination of the Injured to doubt his presence at the time and place of accident.

7. Regarding Injured being a gratuitous passenger, I find that Injured in his evidence has categorically asserted that he is a vegetable seller and on the day of accident he had purchased 12 quintals of peas from Khatima Mandi to sell it in Bareilly Mandi and for each sack of peas, he had paid ₹40/- and in all he had paid ₹2,400/- to the owner of the insured vehicle to enable him to carry the peas in the insured vehicle. There is hardly any cross-examination of Injured on the aforesaid aspect and so, it cannot be said that Injured was a gratuitous passenger in the insured vehicle.

8. On the disability aspect, I find that as per the disability certificate on record, the permanent disability of the injured is 78% in relation to bilateral lower limbs. On the functional disability aspect, not much has been said by the Injured in his evidence and so, in light of the evidence of the Injured and disability certificate on record, I find that the functional

disability of the Injured has been rightly assessed by the Tribunal at 35%. On the aspect of quantum of compensation awarded, I find that the Tribunal has assessed '*loss of future earning capacity*' on the minimum wages applicable to an unskilled worker in Uttar Pradesh (U.P) which was ₹7,341/- p.m on the day of accident. In the instant case, addition of 40% towards future prospects has to be made in view of Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680. Accordingly, '*loss of earning capacity*' is re-assessed as under:-

₹7,341/- X 12 X 18 X 140/100 X 35/100 = ₹7,76,971/-.

9. In the face of medical evidence on record, I find that the compensation of ₹20,000/- granted by the Tribunal under the head of '*disfigurement*' is on the lower side and it is accordingly enhanced to ₹50,000/-. Compensation of ₹10,000/- granted by the Tribunal under the head of '*loss of amenities and enjoyment of life*' is wholly inadequate. Accordingly, compensation under this head is enhanced to ₹50,000/-. Compensation of ₹40,000/- granted by the Tribunal under the head of '*pain and suffering*' is enhanced to ₹50,000/-. Compensation of ₹30,000/- granted by the Tribunal under the head of '*special diet, attendant and conveyance charges*' is also enhanced to ₹50,000/-. In light of the aforesaid, compensation payable is re-assessed as under :-

Head of Compensation	**Amount(in ₹)**
Loss of earning capacity	₹7,76,971/-
Deformity	₹ 50,000/-
Pain & Suffering	₹ 50,000/-

Special Diet, Attendant and Conveyance charges	₹ 50,000/-
Loss of Amenities and enjoyment of life	₹ 50,000/-
Loss of income during treatment	₹ 44,046/-
Medical Expenses	₹1,40,000/-
Total	₹ 11,61,017/- (rounded off to ₹11,61,020/-)

10. Consequentially, the compensation amount payable stands enhanced from ₹8,39,026/- to ₹11,61,020/-. The enhanced compensation be deposited by Insurer with the Tribunal within four weeks from today. The re-assessed compensation shall carry interest @ 9% *per annum* and it be disbursed in the ratio and manner as indicated in the impugned Award. Statutory deposit, if any, be refunded to Insurer.

11. With aforesaid directions, these appeals and applications are accordingly disposed of.

(SUNIL GAUR)
JUDGE

JULY 19, 2018
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