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

Date of Decision: September 07, 2018

\+ **MAC.APP. 588/2015**

HDFC ERGO GENERAL INSURANCE CO LTD ..... Appellant
Through: Mr. A.K. Soni, Advocate

versus

RAJ KUMAR & ORS .....Respondents
Through: Mr.Manish Kumar and Ms. Rama Yadav, Advocates for respondent-Injured

\+ **MAC.APP. 10/2017**

RAJ KUMAR ..... Appellant
Through: Mr.Manish Kumar and Ms. Rama Yadav, Advocates

versus

HDFC ERGO GENERAL INSURANCE CO LTD & ORS .....Respondents
Through: Mr. A.K. Soni, Advocate for respondent-Insurer

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 27th May, 2015 grants compensation of ₹15,12,081/- with interest @ 9% *per annum* to injured-*Raj Kumar,* a Potter, aged 22 years, on account of grievous injuries suffered by him in a vehicular accident, which took place on 24th May, 2010.

2. In the above captioned first appeal, *HDFC ERGO General Insurance Co Ltd (hereinafter referred to as 'Insurer')* seeks recovery

rights against owner of the vehicle in question, whereas in the above captioned second appeal, enhancement of compensation is sought by *Raj Kumar (hereinafter referred to as 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:-

> *"Brief facts of the present case is that on 24/05/2010 at about 8.30 hours when the petitioner alongwith his cousin Sh. Phool Singh was going to take fruits form the side of Kali Basti, Uttam Nagar and when the petitioner reached on Road No.37, near LIG Flats More, then the offending vehicle i.e. i-10 Car bearing No. DL-3C-BQ-0162 which was being driven by its driver/respondent No.1 in rash and negligent manner hit the petitioner. Resultantly, the petitioner sustained grievous injuries. In total, the petitioner in the prayer of the petition have claimed Rs.25,00,000/- as compensation on account of the injuries sustained by 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 and as per Disability Certificate *(Ex.PW7/A),* Injured had suffered permanent disability of 75% in relation to his whole body and mental disability has been assessed to be 50%, whereas overall permanent disability has been assessed to be 83% in relation to his whole body. However, the Tribunal has assessed the functional disability to be 60%. On the strength of evidence recorded, impugned Award has been

rendered. The income of Injured has been assessed on minimum wages payable to an unskilled worker and addition of 50% towards *'future prospects'* has been made and thus, *'loss of earning capacity'* has been assessed at ₹10,25,395/-. The breakup of compensation awarded to the Injured by the Tribunal is as under:-

Sl. No.	*Head of compensation*	*Compensation granted by this Court*
1.	*Reimbursement of medical expenses*	*Rs.23,350/-*
2.	*Pain and suffering*	*Rs.1,00,000/-*
3.	*Conveyance & special diet*	*Rs.30,000/-*
4.	*Attendant charges*	*Rs.20,000/-*
5.	*Loss of income during treatment period*	*Rs.63,336/-*
6.	*Compensation on account of disability*	*Rs.10,25,395/-*
7.	*Loss of amenities of life*	*Rs.50,000/-*
8.	*Loss of disfigurement and loss of marriage prospects*	*Rs.1,00,000/-*
9.	*For inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life*	*Rs.50,000/-*
10.	*Compensation towards future treatment expenses*	*Rs.50,000/-*
	Total	***₹15,12,081/-***

5. Learned counsel for Insurer assails impugned Award on the ground that since the income of Injured has been assessed on minimum wages, therefore, addition towards *'future prospects'* has to be 40%. It is also submitted by Insurer's counsel that compensation granted by the Tribunal under *'non-pecuniary head'* is exorbitant and it needs to be

suitably reduced. Learned counsel for Insurer also seeks recovery rights on the ground that the insured vehicle was being driven by a driver, who was holding a Learner's Driving Licence and he was not accompanied by a qualified driver/trainer and since Rule 3 of *the Central Motor Vehicles Rules, 1989* has been violated, therefore, recovery rights ought to be granted to Insurer.

6. On the other hand, learned counsel for Injured refutes the stand taken on behalf of Insurer and submits that the quantum of compensation granted by the Tribunal is inadequate and it needs to be substantially enhanced. It is submitted that *'future medical expenses'* of ₹50,000/- granted by the Tribunal is wholly inadequate and it needs to be enhanced.

7. Upon hearing and on perusal of impugned Award and the evidence on record, I find 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'* has to be 40%. The Tribunal has erred in making addition of 50% towards *'future prospects'*. Accordingly, *'loss of earning capacity'* is reassessed as under:-

$$₹5,278/- \times 12 \times 18 \times \frac{140}{100} \times \frac{60}{100} = ₹9,57,640/-$$

8. So far as compensation granted by the Tribunal under the *'non-pecuniary heads'* is concerned, I find that compensation of ₹1 lac granted by the Tribunal under the head of *'pain and suffering'* is appropriate. The Tribunal has granted composite compensation of ₹1 lac under the head of *'loss of disfigurement'* and *'loss of marriage prospects',* which appears to be on lower side. It is deemed appropriate to split this head into two

heads. Accordingly, compensation of ₹1 lac each is granted under the heads of *'loss of disfigurement'* and *'loss of marriage prospects'*. The compensation of ₹50,000/- granted by the Tribunal under the head of *'loss of amenities of life'* is found to be inadequate and is accordingly enhanced to ₹1 lac. The compensation of ₹50,000/- granted by the Tribunal under the head of *'mental stress, etc.,'* is merged in the head of *'loss of amenities of life'*. So, now the compensation under the head of *'loss of amenities of life'* comes to ₹1,50,000/-, as the Injured had suffered mental disability to the extent of 50%.

9. So far as *'future medical expenses'* are concerned, there is no basis to assess it and so, compensation of ₹50,000/- granted by the Tribunal under this head is disallowed with the alternative that the Injured shall be referred by a Panel Doctor of Insurer to a Doctor, who has expertise in this field, and in view of evidence of *Dr. Anil Kumar Garg (PW-6)*, estimate regarding the cost of *'surgery to be undergone by the Injured'* shall be obtained and the cost of such operation/surgery shall be borne by the Insurer, who shall directly remit the cost so incurred for further surgery etc. to the concerned hospital.

10. In light of the aforesaid, compensation payable to Injured is reassessed as under: -

Loss of earning capacity	₹9,57,640/-
Medical expenses	₹23,350/-
Pain and suffering	₹1,00,000/-
Conveyance & special diet	₹30,000/-
Attendant charges	₹20,000/-
Loss of income during treatment period	₹63,336/-
Loss of amenities of life	₹1,50,000/-

Loss of marriage prospects	₹1,00,000/-
Loss due to disfigurement	₹1,00,000/-
Total	**₹15,44,326/-**

11. Consequentially, the compensation awarded stands enhanced from ₹15,12,081/- to ₹15,44,326/-. The enhanced compensation be deposited by Insurer with the Tribunal within six weeks from today. The modified compensation shall carry interest @ 9% *per annum*. The awarded compensation be disbursed in the manner as indicated in the impugned Award. Statutory deposit, if any, be refunded to Insurer. So far as grant of recovery rights to Insurer is concerned, I find that there is unchallenged evidence of *Deepak Saini*, who has deposed that he was accompanying his son, who was holding Learner's Driving Licence at the time of the accident, and this witness-*Deepak Saini* was holding a valid driving licence. In the face of unrebutted evidence of *Deepak Saini* and his son-*Kunal Saini*, I find no justification to grant recovery rights to Insurer. Hence. recovery rights as claimed by the Insurer are denied.

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

(SUNIL GAUR)
JUDGE

SEPTEMBER 07, 2018
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