

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

Date of Decision: October 11, 2018

+ **MAC.APP. 1003/2017**

PREM CHANDAppellant
Through: Ms. Pinki Talukdar, Advocate
versus

SHAMIM HUSAIN & ORS.Respondents
Through: Mohd. Mustafa, Advocate for
respondent No.2
Counsel for respondent No. 3
(appearance not given)

+ **MAC.APP. 45/2018 & CMs 1126-27/2018**

JAHIR ALAMAppellant
Through: Mohd. Mustafa, Advocate
versus

PREM CHAND & ANR.Respondents
Through: Ms. Pinki Talukdar, Advocate for
respondent No.1
Counsel for respondent No. 3
(appearance not given)

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 26th April, 2017 grants compensation of ₹7,90,629/- with interest @ 9% per annum to Injured-Prem Chand, (hereinafter referred to as 'Injured') aged 25 years, on account of grievous injuries suffered by him in a vehicular accident, which took place on 3rd April, 2012.

2. In the above captioned first appeal, Injured-Prem Chand seeks

enhancement of compensation, whereas in the above captioned second appeal, the owner of the vehicle in question seeks exoneration from paying the awarded compensation. 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 case are that on 03.04.2012 at about 10.30, injured was going on his motorcycle to Maa Anandmai Marg, Kalkaji, New Delhi via MB Road. In between, near ESI hospital he dropped his brother who was accompanying him. Thereafter, he proceeded towards ESI hospital. In the meanwhile, all of sudden a Truck (Dumper) bearing no. HR-55-D-5120 being driven by respondent no. 1/driver in a very high speed, rashly and negligently came and hit the motorcycle of injured. Due to which injured fell down on the road and sustained multiple injuries. Thereafter, he was removed to ESI Hospital, where his MLC was prepared by the concerned doctors. ”

4. To render the impugned Award, Motor Accident Claims Tribunal (hereinafter referred to as the “Tribunal”) has relied upon evidence of Injured (PW1) and as per Disability Certificate (PW1/I) of 27th March, 2017, the Injured had suffered 69% permanent disability in relation to right lower limb. On the strength of evidence recorded, impugned Award has been rendered. The breakup of compensation awarded by the Tribunal to the Injured is as under:-

Compensation for Medical expenses	₹1,72,000/-
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<i>Compensation for pain & suffering</i>	₹35,000/-
<i>Compensation for special diet, conveyance and attendance charges</i>	₹15,000/-
<i>Loss of future earning capacity/future income</i>	₹5,15,549/-
<i>Compensation for loss of amenities and enjoyment of life</i>	₹15,000/-
<i>Compensation for disfigurement</i>	₹10,000
<i>Loss of income during treatment</i>	₹28,080/-
<i>Total</i>	₹7,90,629/-

5. Learned counsel for owner of vehicle in question assails the impugned Award on the ground that *Zahir Alam* is not the registered owner of the vehicle in question. It is submitted that *Zahir Alam* was the employee of *Surjeet Singh* and on his directions, he had obtained the *Superdari* of the vehicle in question. Reliance is placed upon Supreme Court' decision in *Naveen Kumar vs. Vijay Kumar and Ors.* (2018) 3 SCC 1 to submit that only a registered owner of a vehicle comes within the definition of owner under the *Motor Vehicles Act, 1988*. It is submitted that *Zahir Alam* is not liable to pay the awarded compensation.

6. On the contrary, learned counsel for *Surjeet Singh*, who is the registered owner of the vehicle in question supports the impugned Award and submits that the vehicle in question was sold to *Zaheer Alam* much prior to the accident. It is submitted on behalf of the counsel for registered owner of vehicle in question that *Zaheer Alam* was not an employee of *Surjeet Singh* as he had got the vehicle in question released

on *Superdari* because he had bought the vehicle in question from *Surjeet Singh* for consideration. Attention of this Court is drawn to an application dated 9th April, 2012 filed by *Zaheer Alam* before a Criminal Court, to point out that in the said application, *Zaheer Alam* had claimed that he is rightful owner of the vehicle in question. So, it is submitted that the liability to pay the compensation awarded is of *Zaheer Alam* and not of *Surjeet Singh*.

7. On the other hand, learned counsel for Injured-*Prem Chand* submits that the quantum of compensation granted by the Tribunal is inadequate. It is submitted that Injured was driver by profession and the Tribunal has erred in assessing his income at minimum wages payable to unskilled worker. It is also submitted that the compensation granted by the Tribunal under the '*non-pecuniary heads*' is inadequate and it needs to be substantially enhanced. Thus, enhancement of compensation is sought by Injured.

8. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that in the normal course, registered owner of a vehicle is liable to pay awarded compensation. But in the instant case, the benefit of Supreme Court's decision in *Naveen Kumar (Supra)* cannot be availed of by the actual owner-*Zaheer Alam* as he has not come forward to file a reply to the claim petition, nor has led any evidence. A perusal of record reveals that *Zaheer Alam*, the actual owner of the vehicle in question had executed *Superdaginama* dated 13th April, 2012 before the Criminal Court to get the vehicle in question released on *Superdari*. Not only this, the actual owner-*Zaheer Alam* of the vehicle in question had filed an application dated 9th April, 2012 before the Criminal

Court for getting the vehicle in question released on *Superdari* and in the said application-*Zaheer Alam* had claimed himself to be rightful owner of the vehicle in question. In the face of aforesaid documentary evidence on record, I find that the Tribunal has rightly put the liability on *Zaheer Alam*, the actual owner of vehicle in question, to pay the awarded compensation. There is no justification whatsoever to absolve *Zaheer Alam*, the actual owner of the vehicle in question from paying the awarded compensation.

9. Enhancement of compensation is sought on the plea that the Injured was driver by profession. However, copy of driving licence has not been placed on record. Injured-*Prem Chand (PW1)* in his evidence has asserted that he was working as a driver with Panchshila Taxi Stand at Hauz Khas Metro Station, New Delhi and his evidence remains unchallenged on this aspect. Therefore, the Tribunal was not justified in assessing the income of Injured on minimum wages payable to unskilled worker. It is matter of record, when this accident took place Injured was driving a motor-cycle. So, in view of the unchallenged evidence regarding Injured being a driver, the income of Injured is assessed on basis of minimum wages payable to a skilled worker. Hence, '*loss of income during treatment*' of Injured for a period of four months, is reassessed as under:-

₹8,528/- per month X 4= ₹34,112/-

10. As regards '*loss of earning capacity*' of Injured, I find that Injured was aged 25 years on the day of the accident and so, the Tribunal has rightly applied the multiplier of 18 but has erred in not making any addition towards '*future prospects*'. In view of Supreme Court's three

judge bench decision in *Jagdish vs. Mohan and Others* (2018) 4 SCC 571, addition of 40% towards '*future prospects*' is made. The Tribunal has rightly assessed the functional disability of the Injured at 34%. Accordingly, the '*loss of earning capacity*' of Injured is reassessed as under:-

$$\text{₹}8,528 \times 12 \times 18 \times 140/100 \times 34/100 = \text{₹}8,76,814.848/-$$

(rounded off ₹8,76,815/-)

11. So far as the compensation granted by the Tribunal under the '*non-pecuniary heads*' is concerned, I find it to be just and fair. No case of enhancement of compensation under '*non-pecuniary heads*' is made out. In view of the above, the compensation payable to the Injured is reassessed as under:-

Medical Expenses	₹1,72,000/-
Pain & Suffering	₹35,000/-
Special Diet, Conveyance and Attendant Charges	₹15,000/-
Loss of earning capacity.	₹8,76,815/-
Loss of Amenities and enjoyment of life.	₹15,000/-
Compensation for disfigurement	₹10,000
Loss of income during treatment	₹34,112/-
Total	₹11,57,927/-

12. Consequentially, the compensation amount payable to Injured-*Prem Chand* stands enhanced from ₹7,90,629/- to ₹11,57,927/-. The enhanced compensation be deposited by Insurer with the Tribunal within six weeks from today. The modified compensation shall carry interest @

9% per annum and it be disbursed to Injured in the manner as indicated in the impugned Award. Statutory deposit, if any, be refunded.

13. While modifying the impugned Award in the aforesaid terms, the above captioned two appeals and the pending applications are accordingly disposed of.

(SUNIL GAUR)
JUDGE

OCTOBER 11, 2018

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