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

Date of Decision: October 10, 2018

\+ **<u>MAC.APP. 1014/2017</u>**

BHARTI AXA GEN INSURANCE CO. LTD. ..... Appellant
Through: Mohammad Mustafa, Advocate

versus

SAURABH SHARMA ..... Respondent
Through: Mr. Rahul Rohtagi and Mr. Syed Ajmal Hasan, Advocates

\+ **<u>MAC.APP. 1085/2017</u>**

SAURABH SHARMA ..... Appellant
Through: Mr. Rahul Rohtagi and Mr. Syed Ajmal Hasan, Advocates

versus

BHARTI AXA GENERAL INSURANCE CO LTD & ANR .....Respondents
Through: Mohammad Mustafa, Advocate for respondent-Insurer

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

<u>JUDGMENT</u>
(ORAL)

1. Impugned Award of 16th September, 2017 grants compensation of ₹18,98,228/- with interest @ 9% *per annum* to *Saurabh Sharma (hereinafter referred to as 'Injured'),* aged 33 years, on account of grievous injuries suffered by him in a vehicular accident, which took place on 12th December, 2013.

2. In the above-captioned first appeal, *Bharti Axa General Insurance Co. Ltd. (hereinafter referred to as the 'Insurer')* seeks reduction in the quantum of compensation awarded by the Tribunal, 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:-

> *"The petitioner has filed the present petition with the averments that on 12.12.2013, at 9.15 a.m., he was riding his motorcycle no. DL-7SAD-2780 and reached near BIT College, Meerut Bypass, UP. One auto rickshaw bearing no. UP-15BT-6845 being driven by respondent no.1 came in a high speed and in a rash and negligent manner and hit against motorcycle. He fell down and sustained fracture and injuries all over the body. He was removed to Anand Hospital, Meerut where he was operated upon. FIR no. 56/13, PS, Partapur, District Meerut, U.P was recorded against respondent no.1. The accident has taken place due to the rash and negligent driving of respondent no.1."*

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.PW2/A),* the Injured had suffered permanent disability of 30% in relation to right upper and lower limbs. On the strength of evidence recorded, impugned Award has been rendered. The breakup of compensation awarded by Tribunal to the Injured is as under:-

1.	*Compensation towards pain and suffering*	*₹70,000/-*
2.	*Compensation towards medical bills*	*₹2,27,228/-*
3.	*Compensation on account of physiotherapy*	*₹40,000/-*
4.	*Loss of earning capacity due to disability*	*₹11,52,000/-*
5.	*Loss of earning for a period of 6 months*	*₹2,40,000/-*
6.	*Attendant charges for 4 months*	*₹14,000/-*
7.	*Special diet and conveyance*	*₹35,000/-*
8.	*Compensation towards loss of amenities and enjoyment of life*	*₹40,000/-*
9.	*Compensation towards disfigurement*	*₹40,000/-*
10.	*Compensation on account of future medical expenses*	*₹40,000/-*
	Total	***₹18,98,228/-***

5. Learned counsel for Insurer assails impugned Award on the ground that the accident in question had taken place due to contributory negligence of Injured, which was to the extent of 25% and that there is delay of 35 days in lodging of the FIR regarding the accident in question. It is submitted that the income of Injured has been assessed on the basis of Salary Certificate, which is of the year 2014 whereas the accident in question had taken place in the year 2013. It is further submitted that the income of the Injured ought to have been assessed on minimum wages. Thus, it is submitted that the compensation granted by the Tribunal deserves to be suitably reduced.

6. In the above-captioned second appeal, enhancement of compensation granted by the Tribunal is sought by Injured on the ground that the Tribunal has erred in not making any addition towards *'future prospects'* and the medical expenses incurred by the Injured were to the tune of ₹3,54,407/-, whereas the Tribunal has granted medical expenses

of ₹2,27,228/- only. It is further submitted on behalf of Injured that the Tribunal ought to have assessed the functional disability at 50% and not at 15%. It is next submitted by learned counsel for Injured that the *'cost of implants'* is ₹80,000/- whereas the Tribunal has granted only ₹40,000/-. Compensation of ₹1,70,000/- towards *'special diet and conveyance'* is also sought by Injured. Further, compensation of ₹80,000/- is sought by Injured under the head of *'loss of income'* whereas compensation of ₹2,00,000/- has been sought by Injured under the head of *'pain and suffering'* and compensation of ₹3,00,000/- is sought by Injured under the head of *'loss of amenities of life'*. Thus, a total compensation of ₹42,38,407/- with interest @ 12% *per annum* is sought by Injured. Nothing else is urged by either side.

7. Upon hearing and on perusal of impugned Award and the evidence on record, I find that there is no cross-examination by Insurer on the delay and contributory negligence aspect and so, quantum of compensation cannot be altered on this count. The Tribunal has rightly determined the salary of Injured at ₹40,000/- per month on the basis of Ledger Account of employer of Injured, which is on record as Ex.PW3/1. This Court is of the considered opinion that there is no justification to assess the income of Injured on the basis of minimum wages.

8. 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. Insofar as assessment of functional disability of Injured is concerned, I find that in the face of evidence of Injured and PW2-*Dr.Himanshu, Sr. Resident, Orthopaedic Department, GTB*

Hospital, Delhi, the Tribunal has rightly assessed the functional disability of Injured at 15%. No cogent evidence has been led by Injured regarding cost of implants and so, this Court finds that the cost of *'future medical treatment'* assessed by the Tribunal is justified. The multiplier of 16 applied by the Tribunal is appropriate. In view of the aforesaid, the *"loss of earning capacity"* of Injured is reassessed as under:-

₹40,000/- X 12 X 16 X 140/100 X 15/100 = ₹16,12,800/-

9. As regards *'medical expenses'* to the tune of ₹3,54,407/-, I find that Injured in his chief examination has quantified it and has also placed on record the medical bills, which reveal that the Injured has incurred ₹3,54,407/-. There is no cross-examination of Injured by Insurer in respect of the medical bills of ₹3,54,407/- placed on record by Injured. Since there are no medical bills in respect of remaining *'medical expenses'* claimed by Injured, therefore, the Tribunal has rightly declined them, but has erred in not granting *'medical expenses'* of ₹3,54,407/-. As such, *'medical expenses'* of ₹3,54,407/- are granted to Injured. Similarly, the *lump sum* compensation of ₹40,000/- granted by the Tribunal to Injured on account of expenses incurred by Injured towards *'physiotherapy',* appears to be on lower side as the Injured had placed on record the supporting bill *(Ex.PW-1/2)* to claim physiotherapy expenses of ₹1,08,000/-. There is no cross-examination of Injured by Insurer on this count as well. Hence, compensation of ₹1,08,000/- is granted to Injured on account of expenses incurred by him towards *'physiotherapy'.*

10. Regarding compensation granted by the Tribunal to Injured under the *'non-pecuniary heads',* I find it to be just and fair and it is

accordingly maintained. No case for enhancement of compensation under the *'non-pecuniary heads'* is made out.

11. In view of the aforesaid, the compensation payable to Injured is re-assessed as under:-

1.	Compensation towards pain and suffering	₹70,000/-
2.	Compensation towards medical bills	₹3,54,407/-
3.	Compensation on account of physiotherapy	₹1,08,000/-
4.	Loss of earning capacity due to disability	₹16,12,800/-
5.	Loss of earning for a period of 6 months	₹2,40,000/-
6.	Attendant charges for 4 months	₹14,000/-
7.	Special diet and conveyance	₹35,000/-
8.	Compensation towards loss of amenities and enjoyment of life	₹40,000/-
9.	Compensation towards disfigurement	₹40,000/-
10.	Compensation on account of future medical expenses	₹40,000/-
	Total	**₹25,54,207/-**

12. Consequentially, the compensation payable to Injured stands enhanced from ₹18,98,228/- to ₹25,54,027/-, which shall carry interest @ 9% *per annum*. Six weeks' time is granted to Insurer to deposit the enhanced compensation with the Tribunal concerned. Thereafter, it be disbursed forthwith to Injured in the manner already indicated in the impugned Award. Statutory deposit, if any, be refunded to Insurer.

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

(SUNIL GAUR)
JUDGE

OCTOBER 10, 2018
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