

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

Date of Decision: April 24, 2018

+ **MAC.APP. 788/2015 & C.M. 23509/2015**

THE ORIENTAL INSURANCE CO LTD Appellant

Through: Ms. Komal Dhingra & Mr.J.P.N.Shahi,
Advocates

Versus

MUKTI JANA & ANR. Respondents

Through: Mr.S.N.Parashar, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 16th July, 2015 grants compensation of ₹4,00,635/- with interest @ 9% per annum to respondent-injured-Mukti Jana, aged 39 years, on account of grievous injury suffered by respondent-Injured in a vehicular accident, which took place on 18th November, 2013. The facts as noticed in the impugned Award are as under:-

“Brief facts, as stated in the petition are that on 18.11.2013 at about 08.30 AM, Mukti Jana along with his brother was riding a scooter no. DL-6SP-2546 was proceeding from their home at Hari Nagar, PS. Badarpur to Patiala House Courts and while they reached near Tata Indicom Office at Mathura Road, New Friends Colony, at the same time a motorcycle bearing No. DL-SCB-8380, being

driven rashly and negligently and at a very high speed, hit from back side the scooter of the petitioner, resulting into injuries to the petitioner as well as the pillion rider. It is stated that the accident took place due to rash and negligent driving of the said vehicle. It is claimed that petitioner was removed to LNJP Hospital and was admitted from 19.11.2013 to 12.12.2013, where he remained under treatment as a outdoor patient and incurred Rs.50,000/- on his treatment, Rs.30,000/- on special diet, Rs.20,000/- on conveyance, Rs.30,000/- spent on attendant, Rs.25,000/- on physiotherapy and future expenses of Rs.50,000/-. It is stated that petitioner was 39 years and was running Canteen (Tea Shop) at Patiala House Courts, New Delhi and was earning Rs.15,000/- per month and due to accident, the petitioner has not been able to attend his business for about 9 months. Injured is stated to have suffered pain, agony, shock, besides financial losses and a sum of Rs.20,00,000/- has been claimed as compensation.”

2. To render the impugned Award, learned Motor Accident Claims Tribunal (*hereinafter referred to as the “Tribunal”*) has relied upon evidence of injured and Dr. Anshul Goel (PW-2), who has proved the medical treatment record and as per evidence of this witness, injured had sustained *fracture and dislocation of left ankle*. 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 Rs.)
Loss of Income during treatment	₹88,946/-
Deformity	₹50,000/-
Future Treatment	₹25,000/-

Pain & Suffering	₹1,00,000/-
Special Diet	₹20,000/-
Conveyance	₹20,000/-
Attendant Charges	₹50,000/-
Loss of enjoyment and life	₹25,000/-
Medical Expenses	₹11,689/-
Physiotherapy	₹10,000/-
Total	₹4,00,635/-

3. Learned counsel for appellant-insurer assails impugned Award on the ground that quantum of compensation granted is on the higher side and it needs to be suitably reduced.

4. On the contrary, learned counsel for respondent-injured supports the impugned Award and maintains that the compensation granted is just and proper.

5. Upon hearing and on perusal of impugned Award and the evidence on record, I find that the medical card of respondent-injured issued by Lok Nayak Hospital bears endorsement of 15th September, 2014 to the effect that respondent-injured is unable to bear the weight fully, without support and he has been advised surgical operation for correction of *ankle anthrodesis*, a surgical procedure to reduce the pain. The deformity of the left ankle of respondent-injured is evident from the medical record and the photographs on record. In light of evidence of Dr. Anshul Goel (PW-2), the compensation of ₹50,000/- granted under the head of 'Deformity'

is justified. Respondent-injured is a tea vendor and he claimed that he used to earn ₹16,000/- per month and because of this accident, he could not work for about five months.

6. Upon perusal of the evidence of respondent-injured and medical record, I find that the compensation of ₹88,946/- granted to respondent-injured under the head "*Loss of income during treatment*" is not at all exorbitant. Dr. Anshul Goel (PW-2) in his evidence has categorically stated that respondent-injured needs to undergo a surgical operation, therefore, the compensation granted under the head "*Future Treatment*" is quite justified. Compensation of ₹1,00,000/- has been granted under the head "*Pain & Suffering*". Considering the nature of injury sustained by respondent-claimant and the period of hospitalization and the fact that respondent-injured still has to undergo surgical operation, I find that sum of ₹1,00,000/- under this head cannot be said to be on the higher side. The compensation granted under the heads of "*Special Diet*" and "*Conveyance*" of ₹20,000/- each and ₹50,000/- under the head "*Attendant Charges*" and ₹25,000/- under the head "*Loss of Enjoyment of Life*", commensurates with the nature of injury suffered by respondent-injured. The compensation of ₹11,689/- granted under the head "*Medical Expenses*" and ₹10,000/- granted under the head "*Physiotherapy*" is duly supported by documentary evidence on record.

7. In view of above, this Court finds that the compensation granted to respondent-injured is justified and no case for reduction of compensation is made out. This appeal is accordingly dismissed. Registry is directed to forthwith release the amount of compensation to respondent-injured in

terms of impugned Award. Statutory deposit, if any, be refunded to appellant.

8. With aforesaid directions, this appeal and the application are disposed of.

(SUNIL GAUR)
JUDGE

APRIL 24, 2018

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