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

Date of Decision: October 01, 2018

\+   **MAC.APP. 968/2015**

THE ORIENTAL INSURANCE COMPANY LIMITED …..Appellant

Through: Mr. A. K. Soni, Advocate

Versus

GANGA SARAN & ORS. .....Respondents

Through: Mr. Ghanshyam Thakur, Advocate For R-1

\+   **MAC.APP. 808/2018**

GANGA SARAN .....Appellant

Through: Mr. Ghanshyam Thakur, Advocate

Versus

THE ORIENTAL INSURANCE COMPANY LTD & ORS ....Respondents

Through: Mr. A.K. Soni, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 25th August, 2015 grants compensation of ₹3,37,493/- with interest @ 9% per annum to Ganga Saran *(hereinafter referred to as the "Injured"),* aged 45 years, on account of grievous

injuries suffered by him in a vehicular accident, which took place on 4th February, 2009.

2. In the above captioned first appeal, The Oriental Insurance Company Limited *(henceforth referred to as the "Insurer")* seeks recovery rights against driver and owner of Insured vehicle, whereas in the above captioned second appeal, enhancement of compensation is sought by the Injured-*Ganga Saran.*

3. 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. The factual background of this case, as noticed in the impugned Award, is as under:-

> *"As per case of petitioner, on 04.02.2009, he was returning to his house from Jharoda on his motorcycle having registration number DL 8SNC 2044. He was driving the said bike with due care and caution by observing traffic rules. At about 01.00 a.m., when he reached main road, Pooth Kalan, near Bus stand, all of a sudden a tempo bearing no. DL ILA 7952 being driven rashly, negligently and at a very high speed came there and hit his motorbike with great force. Due to heavy impact, he (petitioner) fell down on road and suffered injuries, all over his body."*

4. To render the impugned Award, Motor Accident Claims Tribunal *(hereinafter referred to as the "Tribunal")* has relied upon evidence of

Injured-*Ganga Saran (PW-1)* and as per Disability Certificate (Ex.PW2/1), the Injured had suffered permanent physical disability of 37% in relation to his 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 :-

1.	Medical expenses	₹50,285/-
2.	Loss of income during treatment	₹47,208/-
3.	Special diet	₹25,000/-
4.	Conveyance Charges	₹15,000/-
5.	Pain & Suffering	₹1,00,000/-
6.	Loss of enjoyment of life	₹1,00,000/-
	Total compensation	₹3,37,493/-

5. Learned counsel for the Insurer assails the impugned Award on the ground that the Tribunal has erred in not granting recovery rights to the Insurer against driver and owner of the insured vehicle as driver of the insured vehicle was not having a valid driving licence on the day of the accident. To submit so, attention of this Court is drawn to the evidence of Insurer's witness- *Charanjit Singh* (R3W2) to point out that this witness (R3W2) had obtained a Report Ex. R3W2/3 from the concerned licencing authority regarding the said driving license being valid from 18th February, 2013 to 17th February, 2016. It is pointed out that the accident in question had taken place on 4th February, 2009 and on that day, the driver of the insured vehicle was not possessing valid driving license. Learned counsel for the Insurer further submits that an opportunity ought to be granted to the Insurer to get the witness *(R3W2)* from the concerned

licensing authority examined, to prove the Report Ex.R3W2/3. Thus, it is submitted that recovery rights deserve to be granted to Insurer against driver and owner of the insured vehicle.

6. On the contrary, learned counsel for the Injured-*Ganga Saran* refutes the aforesaid stand taken on behalf of Insurer and submits that the quantum of compensation awarded by the Tribunal is inadequate. It is submitted that a shopkeeper atleast earns ₹10,000/- per month and the Tribunal has erred in assessing the income of the Injured on the basis of minimum wages payable to an unskilled worker. It is also submitted by Injured's counsel that no addition towards future prospects has been made and the cost of deploying the attendant has not been granted by the Tribunal. It is next submitted that the *'loss of earning capacity'* of the Injured deserves to be taken into consideration to enhance the compensation granted by the Tribunal. Thus, it is submitted that the compensation granted to the Injured by the Tribunal deserves to be suitably enhanced.

7. Upon hearing and on perusal of impugned Award and evidence on record, I find that the evidence of Insurer's witness–R3W2 is of secondary nature. The Report Ex. R3W2/3 obtained from the concerned licencing authority reveals that the driving license in question was issued in the year 2002. Although, Report Ex.R3W2/3 reveals that the date of renewal is from the year 2013 to 2016, but on its basis, it cannot be concluded that prior thereto, it was not renewed. As such, the application (C.M. 30529/2015) seeking permission to lead evidence in respect of the

aforesaid report from the concerned licencing authority is hereby declined, as there is no justification to permit the Insurer to lead evidence to prove this Report Ex R3W2/3, as it does not advance the case of Insurer. Invalidity of a driving license is not to be presumed on conjunctures. It has to be proved by direct evidence, which is not forthcoming. Thus, no case is made out for granting recovery rights qua driver and owner of the insured vehicle to the Insurer.

8. Although, it is the case of Injured-*Ganga Saran* that he was running a shop in the name of *'Pal General Store'* on rent, but neither rent receipt nor any licence issued by the shop establishment is forthcoming and therefore, the Tribunal has rightly assessed the income of Injured on minimum wages payable to an unskilled worker.

9. As per the medical report, Injured was aged 45 years on the date of the accident. The Tribunal has erred in not assessing the *'loss of earning capacity'* of the Injured, despite the Injured suffering 37% permanent disability in relation to his right lower limb. Dr. Amreshwar Narayan *(PW-2)* has proved the disability certificate of the Injured on record as Ex. PW2/1. As per the evidence of this witness (PW-2) there is shortening of right leg of the injured by 1½ inches resulting in imbalance in walking, difficulty in running, sitting normally and all related difficulties due to imbalance owing to the disability suffered by the Injured.

10. In the face of the above referred evidence on record, the Tribunal has erred in not assessing the functional disability of the Injured. In light

of the evidence of Dr. Amreshwar Narayan *(PW-2)*, evidence of the Injured and the disability certificate, I find that the functional disability suffered by the Injured deserves to be assessed at 20%. While assessing the income of Injured, addition of 25% towards future prospects is made in view of Supreme Court's Three Judge Bench decision in *Jagdish v. Mohan and Others,* (2018) 4 SCC 571. Accordingly, the *'loss of earning capacity'* of the Injured is assessed as under :-

₹3,934 x 12 x 20/100 x 125/100 x 14 = ₹1,65,228/-

11. The compensation granted by the Tribunal under the other heads is found to be just and proper. Thus, the compensation payable to the Injured is re-assessed as under :-

1.	Loss of earning capacity	₹ 1,65,228/-
2.	Medical expenses	₹50,285/-
3.	Loss of income during treatment	₹47,208/-
4.	Special diet	₹25,000/-
5.	Conveyance charges	₹15,000/-
6.	Pain & suffering	₹1,00,000/-
7.	Loss of enjoyment of life	₹1,00,000/-
	Total compensation	₹5,02,721/-

12. Consequentially, the compensation awarded by the Tribunal to Injured-*Ganga Saran* is enhanced from ₹3,37,493/- to ₹5,02,721/-. The re-assessed compensation shall carry interest @ 9% *per annum*. The Insurer is granted six weeks time to deposit the enhanced compensation with interest @ 9% p.a. and after it is so done, the statutory deposit along

with excess deposit be refunded to the Insurer. The modified compensation be released forthwith to Injured- *Ganga Saran* in the manner, as indicated in the impugned Award.

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

(SUNIL GAUR)
JUDGE

OCTOBER 01, 2018
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