

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Order: April 19, 2018

+ MAC.APP. 978/2015

ORIENTAL INSURANCE CO LTD. Appellant
Through: Mr. Amit Gaur & Mr. Pradeep
Gaur, Advocates

Versus

LALU KUMAR AND ORS. Respondents
Through: Mr. S.N.Prashar, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR
ORDER
(ORAL)

1. Appellant is the insurer of Crane, which was involved in vehicular accident and vide impugned Award of 5th October, 2015, compensation of ₹16,16,679/- has been awarded to respondent-injured with interest @ 9% p.a. The facts, as noticed in the impugned Award are as under:-

“According to petitioner, on 06.09.2008 at about 16.50 hrs he was standing on road near Dua Metal Factory, Badli Industrial Area. All of a sudden, a crane bearing registration no. HR-67-2982 being driven by respdt. No.1 (Jageswar Kumar) rashly and negligently on very high speed came there and hit him violently. Due to forcefull impact, he fell down on road and suffered severe multiple grievous injuries. He was admitted in Bara Hindu Rao Hospital, Delhi.”

2. Appellant had got examined its Assistant Manager - Mr. Anuj Nayar and a witness –Mr. J.S. Kushwaha from R.T.O.(Agra). Apart from

the evidence of respondent-injured, there is evidence of driver of the vehicle in question and two doctors, who had certified about extent of permanent disability suffered by respondent-injured. On the basis of evidence recorded, Motor Accident Claims Tribunal (*hereinafter referred to as the "Tribunal"*) has assessed the income of respondent-injured on minimum wages i.e. ₹4,131/- per month and has taken the functional disability suffered by respondent-injured to be 100% and upon considering that the age of respondent-injured at the time of accident was 16½ years, applied multiplier of 18 and had made addition of 50% towards '*future prospects*' and thus, assessed the '*loss of future earnings*' at ₹12,38,344/-. The compensation under the '*non pecuniary heads*' has been also granted to respondent-injured by the Tribunal. The breakup of compensation granted to respondent-injured is as under:-

1.	Medical Bills	₹13,335/-
2.	Special Diet	₹25,000/-
3.	Conveyance	₹20,000/-
4.	Attendant Charges	₹20,000/-
5.	Loss of future earning	₹12,38,344/-
6.	Pain and Suffering	₹1,00,000/-
7.	Loss of enjoyment of life	₹2,00,000/-
	Total	₹16,16,679/-

3. It is a matter of record that vide order of 1st December, 2015, the Tribunal has corrected the mistake in quantifying the compensation granted under the head of '*loss of future earnings*' from ₹12,38,344/- to

₹13,38,344/- and has thus increased quantum of compensation from ₹16,16,679/- to ₹17,16,779/-.

4. The challenge to the impugned Award by learned counsel for appellant-Insurer is on the ground that driving license of the driver of vehicle in question was found to be fake and so, recovery rights ought to be granted to appellant. It is submitted by appellant's counsel that addition of 50% towards '*future prospects*' is on higher side and in view of Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & Ors.* 2017 SCC OnLine SC 1270, addition has to be 40% and not 50%. It is further submitted that as per Medical Examination Report (*Ex. PW2/3*), respondent-injured's disability is to be taken at 75% and not 100%. So, it is submitted that impugned Award needs to be suitably modified.

5. On the other hand, learned counsel for respondent-injured submits that no case for reduction of compensation granted is made out.

6. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that merely because driving license has been found to be fake, it would not absolve the insurer of its liability, as it has to be proved that owner of vehicle in question was aware that driving license of the driver is fake and still, permitted the driver to drive the vehicle. Such a view is taken in view of Supreme Court's decision in *Premkumari & Ors. Vs. Prahlad Dev & Ors.* (2008) 3 SCC 193. In the instant case, the evidence on record does not indicate that owner of vehicle in question was aware that driving license of driver was fake. Pertinently, driver of vehicle in question had stepped into the witness box as R1W1 but he has not been cross-examined on the aspect of his driving

license being fake. So, liability to pay compensation is of appellant-insurer and not of owner of vehicle in question.

7. No doubt Dr. Sanjay Pandey (PW 2/A) in his evidence has deposed in respect of Medical Examination Report (Ex. PW2/3) regarding disability of injured being 75% but in his evidence he has clarified that the injured is unable to stand, walk or perform normal functions and unable to use his lower limbs at all. Since injured has become paraplegic and because Dr.Nirankar Singh (PW2) in his evidence has clarified that injured is post traumatic paraplegic with 100% physical disability and such is the assessment of Medical Board, therefore, the Tribunal in the light of afore-noted peculiarity has considered the functional disability to be 100%. Such an assessment is based upon medical evidence on record.

8. In view of Supreme Court's decision in *Pranay Sethi (supra)*, the addition towards '*future prospects*' has to be 40% and not 50%. Accordingly, the '*loss of future earning*' is recalculated as under:-

$$₹4131 + ₹1652 \times 12 \times 18 = ₹12,49,128/-$$

9. In the light of aforesaid, the compensation payable is as under:-

1.	Medical Bills	₹13,335/-
2.	Special Diet	₹25,000/-
3.	Conveyance	₹20,000/-
4.	Attendant Charges	₹20,000/-
5.	Loss of future earning	₹12,49,128/-
6.	Pain and Suffering	₹1,00,000/-
7.	Loss of enjoyment of life	₹2,00,000/-
	Total	Rs.16,27,463/-

10. In view of above, the compensation granted to respondent-claimant is reduced from ₹17,16,779/- to ₹16,27,463/- . The re-assessed compensation shall carry the interest @ 9% per annum and it be disbursed forthwith to respondent-Injured in the manner as indicated in the Award. The excess deposit, if any, with statutory deposit be refunded to appellant-insurer.

11. With aforesaid directions, this appeal is disposed of.

(SUNIL GAUR)
JUDGE

APRIL 19, 2018
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