



2023:DHC: 7120



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

Date of decision: 26.09.2023

(55)+ MAC.APP. 449/2023

SH HARENDER SINGH

..... Appellant

Through: Mr.S.N. Parashar, Adv.

versus

SH MOHAR PAL & ORS.

..... Respondents

Through: Mr.Ravi Sabharwal, Adv. for
Insurance Company.

(34)+ MAC.APP. 420/2023 & CM APPL. 45775/2023

THE ORIENTAL INSURANCE CO LTD

..... Appellant

Through: Mr.Ravi Sabharwal, Adv.

versus

HARENDER SINGH & ORS.

..... Respondents

Through: Mr.S.N. Parashar, Adv. for
claimants.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

CM APPL. 50095/2023 (Exemption) in MAC.APP. 449/2023

1. Allowed, subject to all just exceptions.

CM APPL. 50094/2023 in MAC.APP. 449/2023

2. This application has been filed by the appellant seeking
condonation of delay of 27 days in re-filing the appeal.

3. For the reasons stated in the application, the delay is
condoned and the application is allowed.

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CM APPL. 50093/2023 in MAC.APP. 449/2023

4. This application has been filed by the appellant seeking condonation of delay of 1 day in filing of the appeal.

5. For the reasons stated in the application, the delay is condoned and the application is allowed.

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6. These cross appeals have been filed by the Insurance Company as also by the Claimant, challenging the Award dated 27.04.2023 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, South District, Saket Courts, New Delhi (hereinafter referred to as the 'Tribunal') in Petition No. 26/2020, titled ***Harender Singh v. Mohan Pal & Ors.***

7. It was the case of the Claimant before the learned Tribunal that on 10.09.2019, he along with Sh.Naresh were going to Mathura from their native village Immamduddinpur via Hasanpur Hodel by motorcycle being driven by the Claimant. When they reached near the Bhiduki Petrol Pump, the Claimant stopped his motorcycle to the extreme left side for drinking water. As they were standing there, all of a sudden, a car bearing registration no.DL-9CAB-2280 (hereinafter referred to as the 'Offending Vehicle') being driven by Sh.Mohan Pal, respondent no. 1 herein, came in a very rash and negligent manner and hit the motorcycle with force, as a result of which, the Claimant suffered 65% permanent physical impairment.

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8. The injuries suffered by the Claimant were described in the Impugned Award as under:-

“26.....Head Injury, SAH left frontal Convexity, Cerebral Edema, Hemorrhagic Contusions in Right Temporo-occipital Lobe, Contusions in left frontal and right Parietal Lobes, Non-displaced Fracture of left Frontal Lobe, Left Supra-orbital Rim, roof and floor of left orbit, Anterior wall and Floors of left Maxillary Sinus, left side of Superior Alveolar Arch, Palatine Process of Left Maxilla.....”

9. The learned counsel for the Claimant states that in spite of the above injuries suffered by the claimant, the learned Tribunal has erred in assessing his functional disability at 33% towards the whole body. He submits that because of the accident, the Claimant is now of unsound mind, and his permanent disability should have been assessed at much higher percentage.

10. On the other hand, the learned counsel for the Insurance Company submits that, in fact, the Claimant himself had appeared as a witness in support of his claim, as PW-3. He, therefore, cannot be stated to be of unsound mind and, in fact, this is the precise challenge of the insurance company to the impugned Award.

11. At this stage, the learned counsel for the Claimant submits that he be allowed to produce additional evidence in support of his claim of the Claimant being of unsound mind. The same is not objected to by the learned counsel for the



Insurance Company.

12. In view of the above, as the determination of the functional disability suffered by the Claimant due to the accident would be a prime consideration for determining the 'just' compensation that should be awarded to the claimant, the Impugned Award, insofar as it determines the compensation payable to the claimant, is set aside. The matter is remanded back to the learned Tribunal for a fresh determination of the Functional Disability of the Claimant and the consequential compensation payable to the Claimant. The parties shall be free to lead further evidence on this issue.

13. By an *interim* order dated 04.09.2023 passed in MAC APP. 420/2023, the Insurance Company was directed to deposit the awarded amount, along with interest, with the learned Tribunal. It was further directed that 70% of the said amount shall be released in favour of the claimant in terms of the schedule of disbursal provided in the Impugned Award.

14. As this will be a case of limited remand, the said *interim* order shall continue during the pendency of the Claim Petition before the learned Tribunal and shall abide by the final determination by the learned Tribunal on the remand.

15. The appeals and the pending application are disposed of in the above terms. There shall be no order as to costs.

16. The statutory amount deposited by the Insurance Company be released to the Insurance Company along with interest accrued thereon.



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17. The parties shall appear before the learned Tribunal on 31st October, 2023.

NAVIN CHAWLA, J

SEPTEMBER 26, 2023/rv/ss

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