
(2018) 05 GAU CK 0059
In the Gauhati High Court
Case No : MACApp. 216 of 2013

GIRIRAJ KAKARANIA

APPELLANT

Vs

BAJAJ ALLIANZ GENERAL INSURANCE CO. LTD.

RESPONDENT

Date of Decision : 03-05-2018

Acts Referred:

Motor Vehicles Act, 1988 — Section 173
Constitution of India, 1950 — Article 21

Citation : (2018) 05 GAU CK 0059

Hon'ble Judges : KALYAN RAI SURANA

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

1) Heard Mr. R.K. Agarwala, the learned counsel for the appellant as well as Mr. R. Goswami, the learned Counsel appearing for the respondent

No.1.

2) None appears on call for the respondent No.2, i.e. the owner of the vehicle involved in the accident, as such, the appeal has been heard ex parte

against the said respondent. The name of respondent No.3, i.e. the driver has been struck off by order dated 28.02.2014, at the risk of the appellant.

3) This appeal under Section 173 of the Motor Vehicles Act, 1988 is for claiming enhancement of compensation passed vide judgment and award

dated 02.04.2013, passed by the learned Member, Motor Accident Claims Tribunal, Guwahati in MAC Case No. 1918/2007.

4) The case in brief is that on 19.11.2004, at about 10.30 pm., while appellant was riding in the Maruti Wagon-R bearing registration No. AS-01-R-

3175, the driver lost control of the vehicle at GS Road and hit a roadside wall, as a result of which the appellant had sustained grievous injuries on

various parts of the body including back-bone, legs and hand. The age of the appellant was 29 years at the time of the accident and the percentage of

his disability was assessed at 45%. It was projected that he was having business of electrical and electronics goods and was having an income of

about Rs.30,000/- p.m. By filing the claim petition, the appellant had prayed for compensation of Rs.80.00 lakh. The respondent No.1 contested the

claim by denying the liability and the appellant was put to strict proof of his claim.

5) On the basis of pleadings, the learned tribunal had framed the following two issues â?

1. Whether the claimant sustained injuries in the alleged road accident dated 19.11.2014 involving vehicle No. AS-01/R-3175 (Wagon-R) and whether

the said accident took place due to rash and negligent driving of the driver of the offending vehicle?

2. Whether the claimant is entitled to receive any compensation and if yes, to what extent and by whom amongst the opposite parties, the said

compensation amount will be payable?

6) In support of the claim, the appellant examined himself as PW-1 and exhibited the following documents, viz., Accident information report (Ext.A),

Prescriptions, reports, etc. (Ext.B), Money receipts, vouchers, etc. (Ext.C Series), Disability Certificate (Ext.D), Admit Card of SEBA (Ext.E), IT

documents (Ext.F), Insurance Policy (Ext.G), GMC Trade Licence (Ext.H), Vehicle RC (Ext.I), Driving Licence of driver (Ext.J).

7) On appreciating the evidence on record, on the basis of Medical certificate, both the issues were decided in favour of the appellant by holding that

the appellant suffered in the accident on sustaining injuries in thigh, hip, backbone, legs, forearm and hands, including fracture injuries of the shaft of

right ulna, communitated fracture of left shaft of femur and cut over right eyelid. The appellant availed treatment at Guwahati, Delhi, and Mumbai, and

had spent Rs.10,47,660/- as per vouchers. The medical certificate of disability was discarded as the doctor was not examined. The learned tribunal, on

the basis of IT record, showing income of Rs.2,08,344/- in assessment year 2005-06, held the income of the appellant to be Rs.15,000/- per month and

loss of income due to disability was assessed at 10% amounting to Rs.3,06,000/- (10% of Rs.18,000/- X 17) and accepting his age to be 29 years as

per HLSC admit card, by applying the multiplier of 17, assessed the

compensation as under:-

- a. Medical expenses: Rs.10,47,660/-
- b. Pain & Suffering: Rs. 20,000/-
- c. Loss of income due to disability: Rs. 3,06,000/-
- d. Loss of amenities of life: Rs. 15,000/-
- e. Incidental expenses like transportation, special food
- f. food, attendant, nursing, etc. Rs. 25,000/-
- g. Total: Rs.14,13,660/-

8) The respondent No.1 was held to be liable for paying compensation of Rs.14,14,000/-with interest @ 6% p.a

9) The submissions made by the learned counsel for the appellant for enhancement of award can be categorized under the following heads:-

- a. Enhancement of percentage of loss of earning capacity.
- b. Enhancement of compensation by considering the disability certificate of the appellant.
- c. Enhancement of compensation on account of future prospects.
- d. Enhancement on account of permanent disability.
- e. Enhancement on account of misc. heads of pain and suffering, transportation, attendant, special food, nursing, etc.

10) On the point of enhancement of award on percentage of loss of income, the learned counsel for the appellant has submitted that the physical

condition of the appellant is that due to his injuries, the appellant cannot walk without support, he cannot sit or stand straight or lift any weight and, as

such, his disability of 45% was not only physical disability, but it was also his functional disability. It is submitted that even for a businessman, a lot of

travelling is required for interacting with sellers and customers for institutional sales of electrical and electronics goods, as such, the assessment of loss

of earning at 10% by the learned tribunal was done without any basis, but should have been assessed at par with the percentage of disability. Per

contra, the learned counsel for the respondent No.1 has submitted that the appellant had only proved one year IT record for Assessment year 2005-

06, which was for financial year 2004-05, i.e. prior to the time of accident, but the appellant did not prove his IT records for subsequent years to show

that there was any reduction of income capacity, as such, no case was made out for enhancement of award on this count.

11) By referring to the cases of Syed Sadiq Vs. United India Insurance Co. Ltd., (2014) 2 SCC 735 and Raj Kumar Vs. Ajay Kumar, (2011) 1 SCC

343, the learned counsel for the appellant has submitted that the learned tribunal had erred in law and on facts in not considering the loss on account of future prospects of the earning capacity of the appellant. Per contra, the learned Counsel appearing for the respondent No.1 has submitted that the injury and/or disability, if any, did not result in loss of earning capacity.

12) By relying on the case of Rekha Jain (supra), Syed Sadiq (supra), R.D. Hattangadi Vs. Pest Control (India) Ltd., (1995) 1 SCC 551, National

Insurance Co. Ltd. Vs. Mubasir Ahmed, (2007) 2 SCC 349, it is submitted that the appellant was entitled to just and fair compensation by considering

that the appellant had suffered 85% disability, which would lead to 100% functional disability as the appellant cannot walk straight and has to walk

with support and that he cannot sit for long and due to his immobility, it has affected his electrical and electronics business, which needs extensive

visits both to meet seller companies and to sell products in course of institutional supplies. Per contra, in this context also, the learned Counsel

appearing for the respondent No.1 has submitted that the injury and/or disability, if any, did not result in loss of earning capacity.

13) On the rejection of certificate of disability (Ext.D) for non examination of the doctor, it was submitted that the appellant had filed petition No.

3561/12 dated 30.07.2012 and petition No. 4637/12 dated 26.09.2012 for summoning the doctor, and though the learned tribunal had issued summons,

the said doctor did not appear. Thereafter, by petition No. 7030/12 dated 15.12.2012 the appellant had apprised the learned tribunal that during the

pendency of the claim petition, the District Social Welfare Board had issued a disability certificate on 21.07.2012 and, as such, prayed for leave to

produce the said evidence, but no order was passed, and on 15.12.2012, the learned Member of the tribunal merely recorded that the petition will be

considered, if any. Thereafter, the case was fixed for argument. It is, therefore, submitted that the appellant had tried to prove his disability and, as

such, the non- examination of doctor was not willful, and hence, the learned tribunal ought not to have discarded the disability certificate. By referring

to the notes of case of United India Insurance Co. Ltd. Vs. Sungjemtoshi & Ors., (2018) 1 GLR NOC 25, it is submitted that non- examination of a doctor was not fatal. It is also submitted that there was no cross examination of PW-1 on the said point, and, as such, the said evidence of the appellant suffering from 45% disability had been admitted without any objection, as such, the learned tribunal ought to have accepted the disability of the appellant as per certificate. Per contra, in this regard, the learned counsel for the respondent No.1 had submitted, that the doctor who had issued the certificate had earned his fame for his penchant for issuing medical certificates without rendering any treatment and it was submitted that even in this case, though the appellant had never taken any medical consultancy from the said doctor from 19.11.2004 i.e. date of accident till date of filing of evidence on affidavit on 06.09.2011, the said doctor had readily issued disability certificate (Ext. D) on 17.12.2010 at a mere asking. According to the learned counsel for the respondent No.1, in many judicial pronouncements, courts have referred such doctors to be "ready to issue certificate doctors". It is further submitted that going by his experience at the bar, if records of MAC appeals of Guwahati City alone are scanned, it is quite possible that this Court would find that more than 50% of injury certificates would be found to have been issued by this particular doctor without rendering any treatment to any of the injury victims.

14) As regards the entitlement of the appellant to his claim for future medical expenses, the learned counsel for the appellant has placed reliance on the case of Govind Yadav Vs. New India Assurance Co. Ltd., (2011) 10 SCC 274, and Jagdish Vs. Mohan & Ors., Civil Appeal No. 2217/2018 (arising out of SLP(C) No. 7739/2017) decided on 06.03.2018.

15) The learned counsel for the appellant has made his submissions for enhancement of the award on account of permanent disability and pain and suffering and under misc. head. It is also submitted that the rate of interest on the award be enhanced to 9% p.a. The learned counsel for the respondent No.1 has also opposed enhancement on these counts. In this regard, heavy reliance is placed on the case of Raj Kumar (supra). The learned Counsel for the appellant had submitted that the appellant had made an expenditure of about Rs.20.00 lakh, out of which he could preserve bills and vouchers of only Rs.10,47,668.82. In this regard, the learned counsel

for the appellant has relied on the case of Rekha Jain Vs. National Insurance Co. Ltd., (2013) 8 SCC 389, to project that non- production of all vouchers are not fatal to the claim of the appellant in the absence of any cross examination of the appellant on the quantum of the claim made.

16) On the basis of the submissions made by the learned counsel for the parties, the only point of determination that arises for decision in this appeal

are â?" Whether just and fair compensation has been awarded by the learned tribunal by virtue of the judgment and award impugned herein? And if

no, to what extent the appellant is entitled to enhancement of award?

17) The first two point raised by the learned counsel for the appellant related to assessment of the percentage of loss of earning capacity of the

appellant in relation to the percentage of disability as decided by the learned tribunal. In this connection, as per the medical certificate (Ext.D), the

appellant was having â??(1) Muscular weakness in left lower limb, and (2) pain and restriction of all movement in left hip, knee and ankleâ??. following

fracture of left femur, the appellant was diagnosed of â??locomotor disability of 45%â?. It is also seen that in order to diagnose the disability, the

doctor did not take any external aid of referring to any of the large number of prescriptions, discharge certificates and medical reports including

scanning and/or x-ray plates. The doctor has not issued the disability certificate as an physician attending the appellant regularly, or as a member of

the Medical Board constituted for assessing disability. Moreover, the doctor has also not referred to the procedure adopted for arriving at his

diagnosis. Therefore, this Court is compelled to accept the submissions made by the learned counsel for the respondent that the said doctor is one who

can be termed as â??ready to issue certificate type doctorâ?, because his said certificate was not issued in his capacity as a Member of the Medical

Board authorized to issue disability certificate. Therefore, the learned tribunal had rightly not relied on the said disability certificate (Ext.D). For the

reasons as discussed above, this Court also does not find any reason to accept the percentage of disability of 45% as mentioned in Ext.D.

18) It is seen that in the evidence of the appellant as PW-1, no attempt has been made to describe his functional disability. The relevant portion of his

evidence-on- affidavit are extracted below:-

â??4] That thereafter, I was treated by different Doctors at Guwahati and

considering the gravity of my injuries, I was taken outside Assam for better treatment. I was treated in Down Town Hospital, Guwahati, Army Hospital (Research & Referral), Delhi Cantt., Sir Ganga Ram Hospital, New Delhi, Ram Lal Kundan Lal Orthopedic Hospital, Delhi and P.D. Hinduja National Hospital & Medical Research Centre, Mumbai. I am still undergoing treatment. Immediately after the accident, I was taken to Down Town Hospital, Guwahati for treatment. I was admitted in Down Town Hospital on 19.11.2004 and treated as an Indoor Patient till 28.11.2004, and there operation was done on my thigh-bone. But I was not cured. Thereafter, I was taken to Delhi for better treatment and consulted and was treated by some renowned doctors there. I was taken to Delhi for treatment on several occasions and ultimately admitted in Ram Lal Kundan Lal Orthopedic Hospital on 09.05.2007 and remained there for treatment till 14.05.2007, During the course of my stay in Ram Lal Kundan Lal Orthopedic Hospital, my Thigh-bone was again operated upon, but I was not fully not fully cured. Thereafter, I was taken to Mumbai for further treatment, and consulted and was treated by Dr. Sanjay Agarwala (Orthopedic Surgeon), P.D. Hinduja National Hospital & Medical Research Centre. But I have not been fully cured and treatment is still going on.

5] That as a result of the accident, I sustained multiple grievous injuries all over my body including thigh, hip, backbone, legs, forearms and hands. My right forearm and left femur has been fractured. There is muscular weakness in left knee and pain, restrictions of movements in left hip, knee and ankle due to fracture of left femur. In cannot stand straight, sit properly, lift weight and cannot walk without support due to the injuries sustained as a result of the said accident. I have become permanently disabled. Dr. P.K. Padmapati (Orthopedic Surgeon), Sr. Medical & Health Officer, MMCH, Panbazar, Guwahati has assessed my percentage of disability to the extent of 45% and in this regard he issued a certificate (Ext.D).â??

19) As stated herein before, the appellant had not examined any doctor to establish the medical condition. Time and again, this Court, as well as the Honâ??ble Court has laid stress that the duty of the Motor Accident Claims Tribunal is to assess functional disability so that just and fair compensation is awarded to a victim of a motor vehicle accident. Therefore, in the absence of any medical evidence of functional disability, this court

has ventured to examine the medical documents available on record. From the medical advice slip dated 19.11.2004 [Ext.B(1)], it is seen that it was

recorded at the time of admission of the appellant to Down Town Hospital that the appellant had a history of 'Ankylosing spondylitis'. Even in the

prescription of doctors of Sir Ganga Ram Hospital, Delhi dated 22.04.2006 (Ext.B-20), there is a mention that the appellant 'has Ankylosing

spondylitis'. The said disease 'Ankylosing spondylitis' also called 'Bechterew's disease' is generally known to be an inflammatory

arthritis affecting the spine and large joints. It is known to cause reduced flexibility in the spine, which normally results in a hunched- forward posture.

It is also known to cause back joint dysfunction or stiffness and people suffering from the said disease also commonly suffer from arthritis, bone tissue

formation, fatigue, hunched back, inflamed tendons, inflammatory bowel disease, physical deformity and sleep disorder.

20) However, the report of Digital Skiagram of pelvis and both hip joints done on 24.04.2006 [Ext. B(22)] suggests osteoarthritis in left hip joint. The

report of MRI of the Lumbar Spine done on 09.05.2006 [Ext.B(24)] suggests 'fused bilateral sacro-iliac joints and lower lumbar facet joints as part

of ankylosing spondylitis with no active inflammation at these sites. The changes in the left hip joint and L-5 - S-1 disc are also likely to be part of same

disease process. No disc bulge is seen indenting the thecal sac or compressing the nerve roots. Clinical correlation would be necessary.'

21) In light of such observations in the above referred exhibits, viz., Ext. B(1), Ext. B(20) and Ext. B(22), it would not be safe to conclude that the

appellant suffered any functional disability because of the injuries suffered in the accident. Rather, as Ext.B(1) reveals that the appellant had

'Ankylosing spondylitis' as a pre-existing disease, this court is of the considered opinion that only by marking disability certificate as Ext.D, and

without examining the doctor who had issued medical certificate without giving any treatment to the appellant, the appellant has not been able to prove

that as a result of the accident, he had suffered any functional disability.

22) In view of the peculiar nature of the case, where notwithstanding that the appellant had suffered grievous injury as a result of the accident, but as

the appellant is found to be already suffering from 'Ankylosing spondylitis' as a pre-existing disease, as such, by disregarding the medical

certificate (Ext.D), the learned tribunal is not found to have committed any error whatsoever in assessing the loss of earning capacity of the appellant

at 10%. The fact that the appellant was suffering from Ankylosing spondylitis as a pre-existing disease is found to have not been disclosed by

the appellant and, as such, this Court is of the view that the appellant had taken the accident to claim compensation on account of a pre-existing

disease. Therefore, the first two points raised by the learned counsel for the appellant is answered accordingly.

23) In respect of the third point raised by the learned counsel for the appellant, regarding enhancement of income by considering the future prospects,

on scrutiny of IT returns, it appears that as on 31.03.2005, the appellant was having salary income of Rs.1,20,000/- and income from business of M/s.

Parkon International as per Income and expenditure account was Rs.8,372/- only. Rest of his income was from interest, dividend and minor's

income clubbed with his income, amounting to Rs.1,00,806/-. The total taxable income was Rs.2,08,344/-. There is no evidence to the effect that

the salary income had reduced. The business income being Rs.8,372/- only, it is not believable that there could be any significant reduction of

income.

24) Nonetheless, in terms of the Constitution Bench judgment rendered by the Hon'ble Supreme Court in the case of National Insurance Co. Ltd.

Vs. Pranay Sethi, (2017) 16 SCC 680, the appellant is entitled to enhancement of income by considering future prospects considering his young age.

Hence, by following the case of Pranay Sethi (supra), the appellant is held to be entitled to 40% enhancement of his income on account of future

prospects. As mentioned herein before, as per the IT return (Ext.F), the income from salary and business was Rs.1,28,372/-, for considering his

income, the income from interest and dividend are excluded. Therefore, 40% of Rs.1,28,372/- would be Rs.51,348/-. Thus, for calculating loss of

earning, the multiplicand would be Rs.1,79,720/-. (i.e. Rs.1,28,372/- + Rs.51,348/-). In this regard, it is seen that the learned Tribunal had calculated loss

of earning capacity by taking the income of the appellant to be Rs.1,80,000/-. Thus, in this regard, this Court has not been able to find any fault with

the finding recorded by the learned tribunal.

25) That other issues raised by the learned counsel for the appellant was for enhancement of the award on account of permanent disability. In this connection, it has already been stated herein before that the appellant has not been able to establish that he had suffered permanent disability to the extent of 45% as per entries made in medical certificate (Ext.D), as such, this court is of the considered opinion that in the absence of proof that as a result of the injuries sustained in the motor vehicle accident, the learned tribunal has not committed any infirmity in not awarding any compensation on the said count.

26) However, on appreciating the ratio laid down by the Honâ??ble Apex Court in the case of Jagdish Vs. Mohan (supra), it is seen that the

Honâ??ble Apex Court had relied on the ratio laid down in the following cases â?" (i) Sri Laxman @ Laxman Mourya Vs. Divisional Manager,

Oriental Insurance Co. Ltd., 2011 (12) Scale 658: (2011) 0 Supreme(Raj) 1171, (ii) K. Suresh Vs. New India Assurance Co. Ltd., (2012) 12 SCC 274,

(iii) Ramesh Chandra Vs. Randhir Singh, (1990) 3 SCC 723, (iv) B. Kothandapani Vs. Tamil Nadu State Transport Corpn. Ltd., (2011) 6 SCC 420,

(v) Govind Yadav (supra), (vi) R.D. Hattangadi (supra), (vii) Nizamâ??s Institute of Medical Sciences Vs. Prasanth S. Dhananka, (2009) 6 SCC 1,

(viii) Reshma Kumari Vs. Madan Mohan, (2009) 13 SCC 422, (ix) Arvind Kumar Mishra Vs. New India Assurance Co. Ltd., (2010) 10 SCC 254 and

(x) Raj Kumar (supra), and the by following the said principles, providing for enhancement of compensation to victims who have suffered permanent

and temporary disability, compensation was enhanced. By following the same ratio, as this Court finds that the appellant, who was already suffering

from â??Ankylosing spondylitisâ?, had suffered the accident, requiring intermittent hospitalization, surgery, etc. Therefore, there is no doubt that the

appellant had suffered severe trauma as he was already a challenged person. Thus, in the absence of convincing documentary proof by way of

medical certificate from the Medical Board, competent to issue disability certificates, this Court is of the considered opinion that the appellant did

suffer from partial and/or temporary disability and, as such, by following the herein before cited cases, the appellant is entitled to enhancement of

compensation on account of non- pecuniary damages, which is assessed in the following paragraph.

27) The next issue raised by the learned counsel for the appellant is for enhancement of compensation on account of misc. heads of pain and suffering, transportation, attendant, special food, nursing, etc. In this regard, on the scrutiny of the vouchers for Rs.10,47,668.82, exhibited for the claim on account of medical expenses, it is seen that these vouchers include (i) voucher dated 30.04.2007 for Rs.7,545/-, (ii) voucher dated 30.04.2007 for Rs.6,219/-, (iii) voucher dated 01.06.2007 for Rs.25,986/-. Therefore, under the head of transportation, the appellant is found to have claimed a sum of Rs.39,750/- under the head of medical expenses for Rs.10,47,668.82, which is found to be awarded in full by the learned tribunal. Moreover, on account of transportation, attendant, special food, nursing, etc., a sum of Rs.25,000/- has been awarded. In respect of loss of amenities in life, the learned tribunal has awarded a sum of Rs.15,000/-. On account of pain and suffering, a further sum of Rs.20,000/- has been awarded. In the opinion of this court, notwithstanding that the appellant had failed to disclose that he was having a pre-existing disease of "Ankylosing spondylitis", yet the appellant is found to be entitled to enhancement of compensation on account of non-pecuniary damages under these two heads of "loss of amenities in life" and "pain and suffering" and, as such, the compensation of Rs.15,000/- and Rs.25,000/- awarded under these two heads are enhanced to Rs.1,00,000/- each and under the head of future treatment, a further sum of Rs.1,00,000/- has been awarded. Thus, the total award stands enhanced by Rs.2,65,000/- (Rupees Two lakh sixty five thousand only).

28) On a perusal of the various cases cited by the learned counsel for the appellant, as referred above, it is seen that in cases where the claimants have been able to prove that any disability was suffered on account of injuries suffered, the compensation on account of (a) pain and suffering, (b) loss of amenities in life, and (c) Incidental expenses are normally awarded. Nonetheless, in this case, the learned tribunal is found to have awarded a sum of Rs.20,000/- under the head of pain and suffering, and a sum of Rs.15,000/- on account of loss of amenities in life, and a sum of Rs.25,000/- on account of incidental expenses. In the opinion of this court, as permanent disability of the appellant has not been proved before the learned tribunal to the extent of 45% or any functional disability, as such, the award under the said two heads of "loss of amenities in life" and "pain and

sufferingâ? has been enhanced on account of â??temporary partial disabilityâ? considering that at the time of the accident, the appellant was already

a physically challenged person, who was suffering from â??ankylosing spondylitisâ??.

29) The last issue raised by the learned counsel for the appellant was for enhancement of the rate of interest. In this connection, it is seen that the

learned tribunal had awarded interest at the rate of 6% p.a. In this regard, it is seen that the rate of interest awarded by various courts including this

court and the Honâ??ble Apex Court range from 6% to 12% p.a. The issue largely remains unsettled. Yet, in several cases, the ratio laid down in the

case of Municipal Corporation of Delhi Vs. Association of Victims of Uphaar Tradey & Ors., (2011) 14 SCC 481 is being following to award 9%

interest in cases relating to award of compensation in a motor vehicle accident. The facts of the said case is that on 13.06.1997, 59 people died in a

fire accident in Uphaar cinema and 103 people suffered injury. The association of victims filed a writ petition before the Honâ??ble Delhi High Court

seeking compensation by invoking Article 21 of the Constitution of India. The Honâ??ble High Court had determined a uniform compensation of

Rs.18.00 lakh payable in case deceased was more than 20 years and Rs.15.00 lakh in respect of deceased who were less than 20 years. A sum of

Rs.1.00 lakh as compensation was payable to all 103 injured. Interest of 9% was awarded. In appeal before the Honâ??ble Supreme Court, the

interest of 9% as awarded by the Honâ??ble High Court was upheld. In the opinion of this Court, those were happier times when bank lending

interest rates were between 14.5% to 17.5% p.a. payable in quarterly rests, and the banks were paying interest on long term fixed deposits at the rate

of 8.5% to 9% p.a., payable half yearly. However, in the recent times, no nationalized banks are paying interest of more than 7.5% p.a.

30) The mandate of law is that a victim must be getting a just and fair compensation and, as such, granting of interest of over bank fixed deposit rates

cannot be said to be equitable for the insurance companies, hence, in view of present interest rates given on fixed deposits, this court is of the opinion

that if rate of interest is enhanced from 6% to 7.5% p.a., the same would be just and proper and equitable for both the appellant as well as for the

respondent- insurer. Hence, rate of interest stands enhanced from 6% to 7.5% p.a. on the awarded sum.

31) In view of the discussions above, the point of determination framed by this Court is answered by holding that the learned tribunal had not awarded

just and fair compensation and, as such, the appellant is held to be entitled to enhancement of award by Rs.2,65,000/- as indicated herein before. The

rate of interest also stands enhanced from 6% to 7.5% p.a. The reassessed award is as follows:-

- a. Medical expenses: Rs.10,47,660/-
- b. Pain & Suffering: Rs. 1,00,000/-
- c. Loss of income due to disability: Rs. 3,06,000/-
- d. Loss of amenities of life: Rs. 1,00,000/-
- e. Future treatment cost: Rs. 1,00,000/-
- f. Incidental expenses like transportation, special
- g. food, attendant, nursing, etc. Rs. 25,000/-
- h. Total: Rs.16,78,660/-

(Rupees Sixteen lakh seventy eight thousand six hundred sixty only).

32) Thus, this appeal stands partly allowed to extent of enhancement of award by Rs.2,65,000/- and the rate of interest also stands enhanced to 7.5%

p.a. As a result, the judgment and award dated 02.04.2013, passed by the learned Member, Motor Accident Claims Tribunal, Guwahati in MAC Case

No. 1918/2007 stands modified.

33) The respondent No.1 i.e. Bajaj Allianz General Insurance Co. Ltd. is directed to deposit the re-assessed award as enhanced by Rs.2,65,000/- on

account of three heads of (i) loss of amenities in life (Rs.85,000/-) (ii) pain and suffering (Rs.80,000/-), and (iii) future treatment (Rs.1,00,000/-) along

with interest at the rate of 7.5% on the enhanced award from 20.08.2007 (date of filing of claim petition) till payment in terms of this order within a

period of one month from today.

34) Return back the LCR.