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

% **Date of Decision: 25th August, 2017**

\+ MAC.APP. 94/2014

NEW INDIA ASSURANCE CO LTD ..... Appellant
Through: Mr. Sanjay Rawat, Advocate

versus

SHRI KALPANA TOMAR & ORS ..... Respondents
Through: Mr. S.N. Parashar and Mr. Sanjeev Srivastava, Advocates for respondent No.1

\+ MAC.APP. 1050/2014 and C.M. Appl. 18971/2014

KALPANA TOMAR ..... Appellant
Through: Mr. S.N. Parashar and Mr. Sanjeev Srivastava, Advocates

versus

SUNIL SINGH & ORS
(NEW INDIA ASSURANCE CO LTD) ..... Respondents
Through: Mr. Sanjay Rawat, Advocate for New India Assurance Co. Ltd.

CORAM:
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT (ORAL)

1. Vide award dated 16th November, 2013 the Claims Tribunal awarded compensation of Rs.24,64,294/- to the injured/claimant, Kalpana Tomar which is under challenge before this Court. The appellant in MAC. APP.

94/2014 is seeking reduction, whereas the appellant in MAC. APP. 1050/2014 is seeking enhancement of the compensation amount.

2. The accident dated 24th July, 2012 resulted in permanent cognitive impairment of 40% to Kalpana Tomar. The claimant was aged 47 years at the time of accident and was self-employed as an interior decorator. The Claims Tribunal awarded Rs.3,30,000/- towards expenditure on treatment, Rs.15,000/- towards physiotherapy, Rs.15,000/- towards conveyance, Rs.15,000/- towards special diet, Rs.4,68,000/- towards nursing/attendant charges and Rs.50,000/- towards pain and suffering. The Claims Tribunal took the minimum wages of Rs.7,748/- per month in respect of a semi-skilled workman, added 30% towards future prospects and applied the multiplier of 13 to compute the loss of earning capacity as Rs.15,71,294/-.

3. Learned counsel for the appellant in MAC. APP. 94/2014 seeks reduction of the loss of earning capacity on the ground that the functional disability of the claimant is not more than 40%. It is further submitted that the addition of 30% towards the future prospects is not warranted.

4. Learned counsel for the claimant urged at the time of the hearing that the income of the claimant be taken as Rs.15,000/- per month according to the Income Tax Returns placed on record. It is further submitted that the compensation be awarded for loss of amenities of life, disfiguration, loss of income and treatment. Learned counsel seeks enhancement of the compensation under the head of pain and suffering.

5. The claimant Kalpana Tomar is present in Court and her condition has been seen. This Court is of the view that the functional disability of the injured is 40%. The functional disability taken by the Claims Tribunal is, therefore, reduced from 100% to 40%. The Claims Tribunal has taken the

minimum wages of a semi-skilled person on the ground that Income Tax Return for the year 2011-12 was not filed. However, Income Tax Returns for the years 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 and 2012-13 were on record. In that view of the matter, the income of the claimant should have been computed by considering the Income Tax Returns on record. The addition of future prospects @ 30% by the Claims Tribunal according to the age of the claims is fair and reasonable and does not warrant any interference. The claimant is entitled to compensation under the heads of loss of amenities of life as well as disfiguration which has not been taken into consideration by the Claims Tribunal.

6. Taking all the aforesaid factors into consideration, this Court is of the view that the reduction of the award amount on the ground of reducing the functional disability from 100% to 40% would be equal to the enhancement that would be warranted by taking the higher income of the claimant according to her Income Tax Returns as well as addition of compensation under the heads of loss of amenities of life and disfiguration, meaning thereby that the reduction would neutralize the enhancement under the other heads. In that view of the matter, the compensation of Rs.24,64,294/- awarded by the Claims Tribunal does not warrant any interference.

7. Both the appeals are dismissed. Pending application in MAC. APP. 1050/2014 is disposed of.

8. New India Assurance Company Limited has deposited the entire compensation amount with the Registrar General of this Court in terms of order dated 29th January, 2014 out of which 75% award amount has already been released to the claimant and Rs.6,66,836.25 is lying in FDR. The Registrar General is directed to disburse the said amount to the claimant

Kalpana Tomar by instructing UCO Bank, Delhi High Court Branch as under: -

(i) Rs.6,00,000/- be kept in 60 FDRs of Rs.10,000/- each in the name of claimant Kalpana Tomar for the period 1 month to 60 months respectively with cumulative interest.

(ii) The balance amount, after keeping Rs.6,00,000/- in FDRs, be released to Kalpana Tomar by transferring the same to her savings bank account No.18710110031582 with UCO Bank, Dwarka Branch, New Delhi (IFSC: UCBA0001871).

9. All the original FDRs shall be retained by UCO Bank, Delhi High Court Branch. However, the statement containing FDR number, FDR amount, date of maturity and the maturity amount be furnished to claimant Kalpana Tomar.

10. At the time of maturity, the maturity amount shall be credited to the aforesaid savings bank account of claimant Kalpana Tomar.

11. No loan or advance or pre-mature discharge shall be permitted without the permission of this Court.

12. The statutory amount be refunded back to New India Assurance Company Limited in MAC. APP. 94/2014.

13. Copy of this judgment be given *dasti* to counsel for the parties under signatures of the Court Master.

AUGUST 25, 2017 **J.R. MIDHA, J.**

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