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

Date of decision: March 08, 2017

\+ **MAC.APP. 199/2007**

RAVINDER KUMAR ..... Appellant

Through: Mr. M.A. Khan, Advocate with appellant in person

versus

UMESH CHAUDHARY& ORS. .....Respondents

Through: Mr. Pankaj Seth and Mr. Shoumik Mazumdar, Advocates for respondent No.3-Insurer

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

% **ORAL**

In this appeal, enhancement of compensation is sought by appellant, who has been granted compensation of ₹2,70,000/- with interest @ 8% *per annum* vide Award of 26th August, 2006 on account of injuries sustained by him in a road accident on 19th June, 2005. The facts are already noted in impugned Award and so need no reproduction. Suffice to note that appellant was aged 34 years at the time of accident and was a self-employed driver said to be earning ₹5,000/- per month. Apart from the evidence of appellant-Claimant, there is other evidence to prove the medical report of appellant and the factum of accident. The owner and driver of offending vehicle have also stepped into the witness box to put forth their version. On the basis of evidence led, learned

Tribunal has rendered the impugned Award. Under the head of *'loss of income',* compensation of ₹20,000/- and under the head of *'medical expenses and special diet, etc.'* ₹1,50,000/- has been granted to appellant by learned Tribunal. Under the head of *'pain and suffering',* compensation of ₹50,000/- has been granted and under the head of *'loss of amenities and general damages',* ₹50,000/- has been granted to appellant.

During the pendency of this appeal, appellant has led additional evidence regarding the medical treatment undertaken by him post the Award period. To prove the medical expenses incurred by him, appellant has got examined *Dr. Sanjay Yadav (AW-2)* from the concerned hospital to prove the Disability Certificate indicating 60% permanent disability. The medical bills placed on record by appellant are to the extent of ₹18,605/- which includes the hospitalization charges as well. To seek enhancement of compensation, learned counsel for appellant submits that *'future prospects'* have not been taken into consideration. It is also submitted that the expenses incurred by appellant in getting treatment post Award, needs to be granted to him and that awarded amount ought to carry interest @ 9% *per annum* instead of 8% *per annum.*

On the contrary, learned counsel for respondent-Insurer supports the impugned Award and submits that appellant was not in permanent employment and so, appellant is not entitled to any compensation on account of *'future prospects'*. However, it is submitted that grant of medical expenses incurred by appellant post Award period is justified. Nothing else is urged on behalf of either side.

Upon hearing and on perusal of impugned Award and the evidence on record, I find that appellant is not entitled to any compensation on account of *'future prospects'* because he was not in permanent employment. A Three Judge Bench of Supreme Court in *Reshma Kumari & Ors. v. Madan Mohan & Anr*. (2013) 9 SCC 65 has reiterated the guidelines laid down by Supreme Court in *Sarla Verma (Smt.) and Others v. Delhi Transport Corporation and Another* (2009) 6 SCC 121 to grant compensation under the head of *'future prospects'*. Applying the dictum of Supreme Court in *Reshma Kumari (supra)* to the facts of instant case, I hold that since the income of appellant-injured has been assessed on minimum wages, therefore, appellant is not entitled to any compensation under the head of *'future prospects'*. However, additional evidence of *Dr. Sanjay Yadav (AW2)* reveals that permanent disability of appellant-injured has been assessed to be 60% in the right lower limb as per Disability Certificate (Ex.AW2/1). In a case of permanent disability of 69% in the lower limb, Supreme Court in *Syed Sadiq and Ors. v. Divisional Manager, United India Insurance Co. Ltd.,* (2014) 2 SCC 735 has assessed the functional disability to be 35%. In the instant case, this Court had the occasion to observe appellant-claimant *(who was injured in this accident)*, walking and so, in the facts and the circumstances of this case, the overall functional disability of appellant is found to be 30%.

Learned Tribunal has erred in not granting any compensation under the head of *'loss of earning capacity'* due to permanent disability suffered in this accident. While taking the income of appellant-injured to be ₹3,160/- per month and in view of Supreme Court's decision in *Raj*

Kumar v. Ajay Kumar, (2011) 1 SCC 343, by applying the multiplier of 16, the *'loss of earning capacity'* is assessed as ₹3,160/- X 12 X 16 X 30% = ₹1,82,016/- (rounded off to ₹1,82,020/-).

The medical expenses of ₹18,605/- incurred by appellant-injured post Award period are also granted to him. However, compensation granted to appellant under other heads is found to be just and fair and is accordingly maintained. The enhanced compensation payable to appellant is as under: -

1.	*Loss of earning capacity*	*₹ 1,82,020/-*
2.	*Medical Expenses and special diet, etc. (including ₹18,605/- incurred post award period)*	*₹ 1,68,605/-*
2.	*Pain and Sufferings*	*₹ 50,000/-*
3.	*Loss of Income*	*₹ 20,000/-*
4.	*Loss of Amenities and general damages*	*₹ 50,000/-*
	Total	***₹ 4,70,625/-***

The interest granted @ 8% *per annum* on the awarded amount is on the lower side. Accordingly, in light of a recent decision of Supreme Court in *Shivakumar M. v. The Managing Director, BMTC,* 2017 SCC Online SC 148, the interest granted on the awarded compensation is enhanced from 8% to 9% *per annum.*

In light of the aforesaid, compensation awarded is enhanced from ₹2,70,000/- to ₹4,70,625**/-**. The enhanced compensation shall carry interest @ 9% *per annum* from the date of filing of the claim petition till the date of deposit of the enhanced amount. Respondent-Insurer is granted four weeks time to deposit the enhanced compensation of ₹2,00,625/- with interest @ 9% *per annum* and differential interest on the entire awarded amount with learned Tribunal, who shall ensure that the enhanced compensation is directly transmitted into the bank account of appellant-Claimant upon his furnishing bank account details.

This appeal is disposed of while modifying the impugned Award in aforesaid terms.

(SUNIL GAUR)
JUDGE

MARCH 08, 2017
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