

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

Date of decision: April 10, 2017

(i) + **MAC.APP. 359/2009**

ORIENTAL INSURANCE CO. LTD. Appellant

Through: Mr. D.K. Sharma, Advocate

versus

MANJEET SINGH & ORS. Respondents

Through: Mr. O.P. Mannie, Advocate

(ii) + **MAC.APP. 407/2011**

MANJEET SINGH Appellant

Through: Mr. O.P. Mannie, Advocate

versus

ORIENTAL INSURANCE CO LTD Respondent

Through: Mr. D.K. Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

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ORAL

The above-captioned two appeals are directed against Award of 28th May, 2009 vide which compensation of ₹8,38,577.36/- (including interim Award) with interest @ 7.5% *per annum* has been granted by Motor Accident Claims Tribunal (West), Tis Hazari Courts, Delhi (*hereinafter referred to as the Tribunal*) to injured/Claimant-Manjeet Singh, aged 45 years, a constable in Delhi Police, on account of

permanent disability of 35% of left lower limb suffered in a road accident on 8th February, 2007. The breakup of compensation awarded by the Tribunal is as under: -

<i>Compensation for medical expenses</i>	<i>₹60,539/-</i>
<i>Compensation for conveyance expenses</i>	<i>₹15,000/-</i>
<i>Compensation for special diet expenses</i>	<i>₹15,000/-</i>
<i>Compensation for loss of income</i>	<i>₹32,137/-</i>
<i>Compensation for future treatment and future loss of income</i>	<i>₹10,300/-</i>
<i>Compensation for loss of earning capacity on account of permanent disability</i>	<i>₹6,05,601.36/-</i>
<i>Compensation for pain and suffering</i>	<i>₹50,000/-</i>
<i>Compensation for loss of amenities of life</i>	<i>₹50,000/-</i>
<i>Less interim compensation paid</i>	<i>₹8,38,577.36/-</i>
<i>Balance</i>	<i>₹25,000/-</i>
<i>Rounded off</i>	<i>₹8,13,577.36/-</i>
	<i>₹8,13,580/-</i>

In the above-captioned first appeal, Insurer seeks reduction of quantum of compensation granted whereas in the above-captioned second appeal, enhancement of compensation is sought. The facts, as already noted in impugned Award, need no reproduction as the subject matter of these two appeals pertains to the quantum of compensation granted.

As per order of 9th November, 2009, service is complete in MAC.APP.359/2009 and as per order 21st March, 2011, service is complete in MAC.APP.407/2011.

With the consent of learned counsel for both the sides, the above-captioned two appeals have been heard together and are being decided by

this common judgment.

To assess the '*loss of earning capacity*', 30% towards '*future prospects*' has been added by the Tribunal while noting that Claimant/Injured has difficulty in walking properly and in climbing stairs and is incapacitated for any out of turn promotion on meritorious grounds, etc..

Learned counsel for Insurer submits that addition of 30% towards '*future prospects*' is wholly unjustified as Claimant/Injured is still in service and has suffered no '*loss of earning capacity*' and so, quantum of compensation granted needs to be accordingly reduced. On the other hand, learned counsel for Claimant-Injured seeks enhancement of compensation by submitting that the compensation granted under the head of '*pain and suffering*' and '*loss of amenities of life*' is wholly insufficient and needs to be suitably enhanced. Nothing else is urged on behalf of either side.

Upon hearing and on perusal of impugned Award and the evidence on record, this Court finds that the evidence regarding the '*loss of future prospects*' is quite conspicuous and it is not in dispute that Claimant/Injured is still in service. In any case, it cannot be ignored that posting, etc., is quite restricted for Claimant/Injured in view of 35% permanent disability suffered by him. In any case, addition of 30% towards '*future prospects*' is wholly unjustified and so, the addition of 30% towards '*future prospects*' is set aside and compensation is accordingly re-assessed as under: -

$$\begin{aligned} & ₹8,532/- \times 12 \times 13 \text{ (multiplier)} \times 35\% \text{ (permanent disability)} = \\ & ₹4,65,847/- \end{aligned}$$

Accordingly, compensation granted by the Tribunal under the head of '*loss of earning capacity on account of permanent disability*' is reduced from ₹6,05,601.36/- to ₹4,65,847/-.

Under the non-pecuniary heads, the compensation of ₹50,000/- granted for '*pain and suffering*' appears to be inadequate and is accordingly enhanced to ₹1 lac. Likewise, compensation granted under the head of '*loss of amenities of life*' is also found to be on lower side and is accordingly enhanced to ₹1 lac.

In view aforesaid, the compensation payable to Claimant/Injured is reassessed as under: -

<i>Compensation for medical expenses</i>	₹60,539/-
<i>Compensation for conveyance expenses</i>	₹15,000/-
<i>Compensation for special diet expenses</i>	₹15,000/-
<i>Compensation for loss of income</i>	₹32,137/-
<i>Compensation for future treatment and future loss of income</i>	₹10,300/-
<i>Compensation for loss of earning capacity on account of permanent disability</i>	₹4,65,847/-
<i>Compensation for pain and suffering</i>	₹1,00,000/-
<i>Compensation for loss of amenities of life</i>	₹1,00,000/-
Total	₹7,98,823/-

Consequently, the compensation granted by the Tribunal of ₹8,38,577.36/- is reduced to ₹7,98,823/- (*i.e. by ₹39,574.36/-*), which shall carry the same rate of interest as awarded by the Tribunal as the same is found to be reasonable in the facts of instant case. In terms of interim

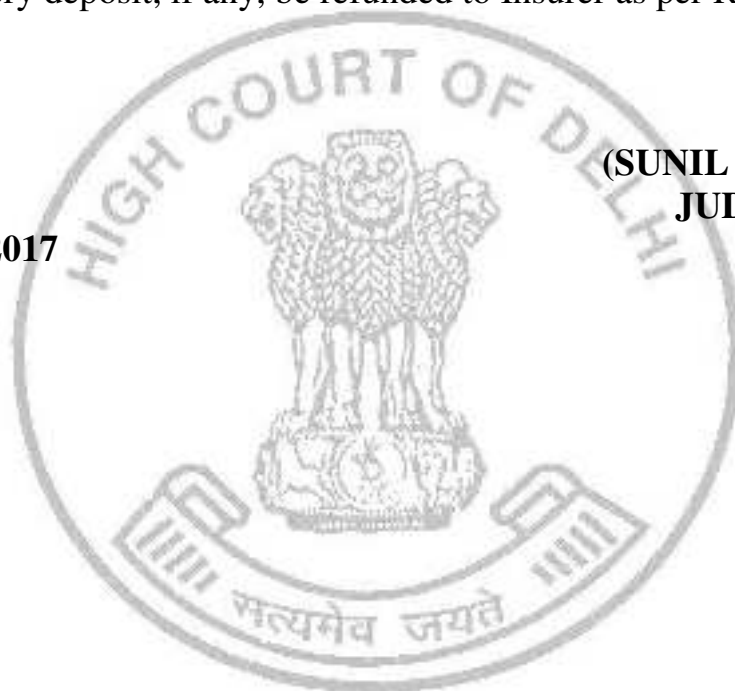
order of 30th July, 2009, awarded amount has been deposited by Insurer. Out of it, ₹6 lac has been retained in form of FDR. After refund of excess amount with proportionate interest to Insurer, modified awarded amount deposited by Insurer be released to Claimant/Injured in the manner indicated in impugned Award.

With aforesaid directions, both these appeals are disposed of while modifying the impugned Award.

Statutory deposit, if any, be refunded to Insurer as per Rules.

APRIL 10, 2017

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**(SUNIL GAUR)
JUDGE**