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

Date of decision: March 30, 2017

\+   **<u>MAC.APP. 165/2015</u>**

NEW INDIA ASSURANCE CO LTD ..... Appellant
Through: Mr. P. Acharya, Advocate

versus

DHARAM PAL & ORS .....Respondents
Through: Nemo

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

<u>JUDGMENT</u>
%   **ORAL**

Vide impugned Award of 2nd January, 2015, Motor Accident Claims Tribunal *(hereinafter referred to as the Tribunal)* grants compensation of ₹14,45,027/- with interest @ 9% *per annum* to respondent-Claimant on account of injuries sustained by *Dharam Pal* in a road accident on 13th October, 2011. The facts as noted in impugned Award need no reproduction for the reason that the limited challenge in this appeal is to impugned Award on the ground of quantum of compensation. Suffice to note that apart from respondent-Injured, there is evidence of *Dr.Radha Raman (PW-2),* who has proved the Disability Certificate of respondent-Injured indicating permanent disability to be 80% in left lower limb. Pertinently, no evidence was led by appellant-Insurer before the Tribunal. On the basis of evidence recorded, impugned

Award has been rendered by the Tribunal.

As per order of 26th August, 2016, service is complete. It is evident from order of 28th February, 2017 that appellant's counsel had informed the counsel for respondent-Injured/Claimant about the date of 'regular hearing' in this appeal, but despite that none has appeared on behalf of respondent on the last date of hearing. Even today, none appears on their behalf.

With the assistance of learned counsel for appellant-Insurer, impugned Award and the evidence on record have been perused. The precise submission of appellant's counsel is that although the Tribunal has rightly assessed income of respondent-Claimant on minimum wages, but has erred in making addition of 30% towards *'future prospects'*. To submit so, reliance is placed upon Supreme Court's decision in *Reshma Kumari & Ors. v. Madan Mohan & Anr.,* (2013) 9 SCC 65.

It is next submitted by appellant's counsel that the functional disability of respondent-Claimant ought to be taken as 40% whereas the Tribunal has erred in taking it to be 80%. So, it is submitted by appellant's counsel that the compensation awarded needs to be suitably reduced. No other submission has been advanced on behalf of appellant-Insurer.

Upon considering the submissions advanced by appellant's counsel in light of evidence on record and the decision cited, I find that respondent-Claimant was a fruit seller aged 45 years on the day of accident and as per his evidence, he is unable to sell the fruits after this accident. Infact, respondent-Claimant has gone to the extent of deposing on oath that he is unemployed. It is relevant to note that there is no cross-examination of respondent-Claimant on this vital aspect. So, it has to be taken that the functional disability suffered by respondent-Claimant is infact 100%. However, in view of evidence of *Dr. Radha Raman (PW-2),* functional disability has to be taken as 80% as it has come in the evidence of this witness (PW-2) that respondent-Claimant can sell fruits while sitting, but certainly cannot sell fruits on *Rehri* and is unable to walk without support. In the considered opinion of this Court, the functional disability assessed by learned Tribunal at 80% does not call for any interference in this appeal.

As regards, addition of 30% towards *'future prospects'*, I find that in view of Supreme Court's decision in *Reshma Kumari (supra)* such addition cannot be made as respondent-Claimant was not in permanent stable employment. So, addition of 30% towards *'future prospects'* is disallowed and the *'loss of earning capacity'* is re-assessed as under:-

₹6,656 p.m. X 12 X 14 (Multiplier) X 80% (Functional Disability) = ₹8,94,566/- (Rounded off to ₹8,94,570/-)

As such, compensation granted under the head of *'loss of earning capacity'* due to the disability suffered is reduced from ₹11,62,936/- to ₹8,94,570/-. However, the compensation granted under the non-pecuniary heads by the Tribunal is found to be on lower side. In view of Supreme Court's decision in *Raj Kumar v. Ajay Kumar,* (2011) 1 SCC 343, compensation under the head of *'pain and suffering'* is enhanced from ₹60,000/- to ₹1 lac. Likewise, compensation granted under the head of *'loss of amenities of life'* is enhanced from ₹20,000/- to ₹1 lac. The compensation granted under other various heads is found to be reasonable and is hence maintained.

In the light of aforesaid, the re-assessed compensation payable to respondent-Claimant is as under: -

1.	*Loss of earning capacity*	*₹8,94,570/-*
2.	*Loss of Income for 3 months*	₹19,968/-
3.	*Pain and sufferings*	*₹1,00,000/-*
4.	*Loss of amenities of life*	*₹1,00,000/-*
5.	*Conveyance Charges*	*₹11,500/-*
6.	*Special diet expenses*	*₹5,000/-*
7.	*Medical bills*	*₹1,05,623/-*
8.	*Attendant charges*	*₹20,000/-*
9.	*Loss on account of shortening of life span*	*₹20,000/-*
10.	*Compensation for disfigurement*	*₹20,000/-*
	Total	***₹12,96,661/-***

In view of Supreme Court's decision in *Shivakumar M. v. The Managing Director, BMTC,* 2017 SCC OnLine SC 148, the rate of interest awarded appears to be just and proper and hence, it is not disturbed. Accordingly, the compensation of ₹14,45,027/- granted by the Tribunal is reduced by ₹1,48,366/. As per order of 20th February, 2015, 75% of the awarded amount deposited by appellant was directed to be released to respondent-Claimant. Learned counsel for appellant submits that the aforesaid order has been complied with.

Consequentially, appellant is granted four weeks' time to deposit the balance modified awarded amount alongwith interest @9% *per annum* from the date of filing of the claim petition till the date of deposit with the Tribunal. Upon deposit, modified compensation be released to respondent-Claimant directly into his bank account upon bank account details being furnished to the Tribunal.

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

With aforesaid directions, this appeal is disposed of while modifying the impugned Award.

(SUNIL GAUR)
JUDGE

MARCH 30, 2017
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