

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

*Date of decision: March 02, 2017*

(i) + **MAC.APP. 345/2008**

ROYAL SUNDARAM ALLIANCE  
INSURANCE CO. LTD.

..... Appellant

Through: Mr. Pankaj Seth, Advocate

Versus

SIDDHARTH JAIN & ORS.

..... Respondents

Through: Mr. Diwan Singh Chauhan,  
Advocate

(ii) + **MAC.APP. 483/2008**

SIDDHARTH JAIN

..... Appellant

Through: Mr. Diwan Singh Chauhan,  
Advocate

Versus

RAJNEESH DAGAR

..... Respondents

Through: Mr. Pankaj Seth, Advocate for  
Insurer

**CORAM:**

**HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT**  
**ORAL**

%

1. In the above captioned two appeals, challenge is to common

impugned award of 27<sup>th</sup> March, 2008 vide which compensation of ₹22,57,000/- with interest @ 7.5% per annum has been granted to Injured on account of injuries sustained by him in a road accident on 24<sup>th</sup> November, 2004. The extent of permanent disability suffered by the Injured in the lower limb has been assessed to be 40% and the functional disability has been taken to be 20% of the entire body by learned Motor Accident Claims Tribunal (*henceforth referred to as the 'Tribunal'*). As per salary slip of Injured, he was earning ₹6,500/- by working as Design Engineer. The breakup of compensation of the Award awarded by the learned Tribunal is as under:-

|              |                             |                      |
|--------------|-----------------------------|----------------------|
| 1.           | Medicine and treatment      | ₹1,50,000 /-         |
| 2.           | Future medical expenses     | ₹2,00,000/-          |
| 3.           | Loss of earning capacity    | ₹16,32,000/-         |
| 4.           | Loss of future prospects    | ₹1,50,000 /-         |
| 5.           | Conveyance and special diet | ₹50,000 /-           |
| 6.           | Pain and sufferings         | ₹75,000 /-           |
| <b>Total</b> |                             | <b>₹22,57,000 /-</b> |

2. The above captioned first appeal is by the Insurer seeking reduction of quantum of compensation granted whereas in the above captioned second appeal, Injured seeks enhancement of compensation granted. As per order of 11<sup>th</sup> September, 2008, service was complete in the above captioned first appeal and in the above captioned second appeal, service was complete as per order of 3<sup>rd</sup> March, 2009. With the consent of learned counsel for the parties, the above captioned two appeals have been heard together and are being decided by this common judgment.

3. The background of this case already stands noticed in the

impugned Award and so, needs no reproduction. Suffice to note that the Injured was aged 23 years on the day of this accident. The Injured had got examined twelve witnesses which includes his own deposition as well. The evidence led by Injured is in respect of the service record and medical treatment provided to him. The Medical Disability Certificate (*Ex. DW1/1*) stands proved by the concerned doctor.

4. In the above captioned second appeal filed by the Injured, additional evidence has been led by Injured. He has placed on record Salary Review and Incentive for Performance for the year 2008-09 of his colleague - *Mr. Rajesh Kachru* (*Ex. Aw1/2*) regarding future prospects and Orthopedic Surgeon - *Dr. Atul Mishra* regarding future medical treatment. Though injured had filed his additional evidence by way of affidavit, but he had not come forward for cross-examination and vide order of 2<sup>nd</sup> December, 2010, injured had closed his evidence. A prayer was made on behalf of injured to permit him to lead additional evidence as his evidence by way of additional affidavit is already on record. Relevantly, no evidence has been led by the Insurer. In the facts and circumstances of this case, aforesaid prayer has been acceded to a limited extent vide a separate order of even date. Injured has been permitted to depose regarding '*letter of offer*' of 22<sup>nd</sup> November, 2014 (*Ex.AW2/1*) and his prayer for leading additional evidence regarding treatment undertaken by him post Award period has been deferred as of now.

5. Learned counsel for the Insurer submits that there is no documentary evidence for assessment of loss of earning capacity nor any basis to take income of Injured to be ₹40,000/- per month. It is pointed

out that as per salary slip (*Ex.DW10/4*) of Injured, he was earning ₹6,500/- per month and assessment of loss of earning capacity has to be on the basis of actual existing income minus the tax deducted. It is next contended by the learned counsel for the Insurer that there is no documentary proof to justify grant of future prospects quantified at ₹1,50,000/-. It is pointed out by learned counsel for Insurer that 40% disability of right lower limb would not justify loss of earning capacity for the reason that Injured was doing desk job and he could have continued to do so. Lastly, it is submitted by learned counsel for the Insurer that grant of ₹2,00,000/- towards future medical expenses is wholly unjustified as even in the additional evidence of *Dr. Atul Mishra*, there is no whisper about the future course of medical treatment to be provided to Injured. Learned counsel for Insurer contends that additional evidence regarding '*letter of offer*' is fabricated and in the absence of primary evidence, it ought not to be relied upon. It is also submitted by learned counsel for Insurer that the '*letter of offer*' (*Ex.AW2/1*) is mere '*offer*' and it should not be made the basis to enhance the earning capacity of injured and his earning capacity should be assessed on the basis of existing salary, which was being drawn by him prior to the accident. Thus, it is submitted that the compensation awarded deserves to be suitably reduced.

6. On the contrary, learned counsel for the Injured submits that the compensation granted by learned Tribunal is on the lower side and in view of the additional evidence led, the compensation granted needs to be suitably enhanced. Learned counsel for Injured submits that the

functional disability ought to be taken to be 100% and learned Tribunal has erred in taking it to be 20%. Attention of this Court is drawn to the additional evidence i.e. Salary Review (*Ex. AW1/2*) of *Mr. Rajesh Kachru* to point out that he was drawing annual salary of ₹5,91,785/- w.e.f 1<sup>st</sup> April, 2008 when he was working with Alstom Projects India Ltd. in Gujarat. Attention of this Court is drawn to letter of offer of 22<sup>nd</sup> November, 2004 by OK Play Toys to Injured offering him salary of ₹2,50,000/- per annum and it is submitted that this letter was received by Injured just two days prior to the accident and so, in light of evidence of *Rajesh Kachru*, the compensation granted needs to be suitably enhanced. Nothing else is urged by either side.

7. Upon hearing and on perusal of impugned Award, the evidence on record as well as additional evidence, I find that Injured aged 23 years was unmarried and is the only son of his parents. Paragraph No. 26 of impugned Award reveals that amputation of one third portion of leg of Injured could be avoided with sustained medical treatment and even after passing of the Award, the medical treatment of Injured continued and in this regard additional evidence has been led by the Injured. It has come in the evidence of Injured that he remained bed-ridden for nine months.

8. Under the head of '*future medical expenses*' Injured has been granted, the cost of orthodontic shoes which he could wear after hospitalization of about nine months and a sum of ₹2,00,000/- has been granted to Injured while taking the recurring cost of orthodontic shoes to be about ₹1,00,000/-. Injured was present during the course of hearing and it was noticed by this Court that even after wearing orthodontic

shoes, Injured was unable to walk without a walking stick and it was disclosed by the Injured that he cannot stand for long and do any kind of job. In this background, loss of earning capacity is to be assessed. The learned Tribunal has relied upon the disability certificate disclosing 40% permanent disability and has assessed functional disability at 20% and the multiplier applied is of seventeen. Surprisingly, income of Injured has been taken ₹40,000/- per month whereas as per Injured's salary slip (*Ex.DW10/4*) he was earning ₹6,500/- per month by working as Design Engineer in a private firm. In the considered opinion of this Court, learned Tribunal has erred in taking the income of Injured to be ₹40,000/- per month.

9. While taking into account the additional evidence led by Injured, I find that on the basis of letter of offer of 22<sup>nd</sup> November, 2004 (*Ex.AW2/1*), the actual annual income of Injured ought to be taken as ₹2,01,000/- (gross salary ₹2,50,000/- per annum minus tax). Considering the age of Injured, multiplier of eighteen is applicable and not seventeen and evidence of Mr. Rajesh Kachru does not advance the case of Injured to claim anything towards future prospects. Judicial notice can be taken of the fact that Injured, who was present in the court, despite support of a walking stick could not walk for a short distance properly. In such a situation, the functional disability of Injured is re-assessed at 50% and accordingly, the compensation granted under the head of '*loss of earning capacity*' is re-assessed as under:-

$$\begin{aligned} & ₹2,01,000 \text{ (net annual income)} \times 18 \times 50 / 100 = \\ & ₹18,09,000/- \end{aligned}$$

Thus, the compensation granted under the head of '*loss of earning capacity*' is enhanced from ₹16,32,000/- to ₹18,09,000/-.

10. Since Injured was not in permanent employment and there are no income tax returns to assess the loss of future prospects, therefore, in view of Three Judge Bench decision of Supreme Court in *Reshma Kumari & Ors. v. Madan Mohan & Anr.* (2013) 9 SCC 65, the compensation of ₹1,50,000/- granted under this head is disallowed. Such a view is taken as Supreme Court in *Sandeep Khanuja v. Atul Dande*, 2017 SCC Online SC has reiterated that multiplier method takes care of future prospects in case of persons not in permanent employment.

11. Grant of compensation of ₹75,000/- under the head of '*pain and sufferings*' is certainly on the lower side as Injured was bed-ridden for nine months and even after passing of the Award, he had received treatment for a substantial period. So, in this background, compensation under the head "*pain and sufferings*" is enhanced from ₹75,000/- to ₹1,00,000/-.

12. In the considered opinion of this Court, no tangible evidence regarding future medical treatment is forthcoming. Such a view is taken as additional evidence of Dr. Atul Mishra (AW2) does not spell out the future medical expenses likely to be incurred. In such a situation, it is deemed appropriate to disallow the future medical expenses as of now with the rider that Injured would be entitled to expenses of ₹1,09,000/- towards the recurring costs of orthodontic shoes. In the light of aforesaid, the compensation payable to Injured is re-assessed as under:-

|              |                             |                      |
|--------------|-----------------------------|----------------------|
| 1.           | Medicine and treatment      | ₹1,50,000 /-         |
| 2.           | Orthodontic Shoes           | ₹1,09,000 /-         |
| 3.           | Loss of earning capacity    | ₹18,09,000/-         |
| 4.           | Conveyance and special diet | ₹50,000 /-           |
| 5.           | Pain and sufferings`        | ₹1,00,000 /-         |
| 6.           | Loss of Amenities of life   | ₹1,00,000 /-         |
| <b>Total</b> |                             | <b>₹23,18,000 /-</b> |

13. In view of Supreme Court's recent pronouncement in *Kalpanaraj & ors. Vs. Tamil Nadu State Transport Corporation* (2015) 2 SCC 764, the enhanced compensation would carry interest @ 9% p.a. from the date of filing of claim petition till the date of deposit of enhanced amount. Insurer is granted four weeks' time to deposit the enhanced compensation with interest @ 9% p.a. and differential rate of interest with the learned Tribunal who shall ensure that enhanced compensation with interest component is directly remitted into the bank account of Injured, upon his furnishing his bank details. So far as future medical expenses are concerned, upon Injured filing an application before learned Tribunal within four weeks, parties are at liberty to lead additional evidence on the aspect of grant of '*future medical expenses*'. The original documents filed by Injured qua additional evidence in the appeal, be returned after taking their photocopies on record. Needless to say, if either side is dissatisfied with the compensation granted under the head of '*future medical expenses*', it shall be appealable.

14. In terms of the aforesaid directions, impugned Award is modified. The compensation already deposited as well as enhanced compensation

of ₹61,000/- with interest component be released directly into the bank account of Injured expeditiously.

15. Both the appeals are disposed of with directions as above.

**(SUNIL GAUR)**  
**JUDGE**

**MARCH 2, 2017**

ac/s

