* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: March 17, 2017

\+ **MAC. APP. 403/2008 & C.M.7672/2011**

NATIONAL INSURANCE CO. LTD. ..... Appellant
Through: Mr. L. K. Tyagi, Advocate

Versus

MENKA LIDHOO & ORS. .....Respondents
Through: Mr. S.M. Suri, Advocate

\+ **MAC. APP. 407/2008**

MENKA LIDHOO ..... Appellant
Through: Mr. S.M. Suri, Advocate

Versus

SAGAR TAUNK & ORS. .....Respondents
Through: Mr. L.K. Tyagi, Advocate for respondent-insurer

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
% **ORAL**

1. In the above-captioned first appeal, reduction in quantum of compensation awarded is sought by Insurer whereas in the above-captioned second appeal, its enhancement is sought by Claimant-injured. Both the appeals arise out of common impugned Award of 15th April, 2008 which grants compensation of ₹42,30,000/- including the interim Award with interest @ 9% *per annum* on account of injuries sustained by

Claimant-*Menka* in a road accident on 16th June, 2002. The facts, as noted in impugned Award, need no reproduction. Suffice to note that apart from evidence of Claimant, there is evidence of *Dr. Rajendra Prasad* who has proved the medical record and the Claimant has also got examined other witnesses regarding her employment, salary, etc. No evidence was led by the Insurer. On the basis of evidence led, impugned Award has been rendered by Motor Accident Claims Tribunal *(hereinafter referred to as Tribunal)*. Learned Tribunal has assessed *'Loss of earning capacity'* at ₹37,80,000/- by adding 50% towards *'future prospects'* and by applying multiplier of 18. Amount of ₹1 lac has been granted to Claimant for purchase of Wheelchair and ₹2 lacs as *'Attendant Charges'* and ₹1 lac has been granted under the head of *'pain and sufferings'* and ₹25,000/- towards *'conveyance expenses'* and ₹25,000/- for *'diet, etc.'* has been granted. In all, compensation of ₹42,30,000/- has been awarded by learned Tribunal. As per order of 6th March, 2009 service is complete.

2. Since these two appeals are directed against common impugned Award, therefore, with the consent of counsel for the parties, they have been heard together and are being decided by this common judgment.

3. Learned counsel for Insurer assails impugned Award on the ground that addition of 50% towards *'future prospects'* is unjustified as Claimant was employed as Assistant Manager in a Call-centre on an annual package of ₹2.5 lacs and was on probation. It is next submitted by Insurer's counsel that as per Supreme Court's decision in *Smt. Sarla Verma & ors. v. Delhi Transport Corporation & Anr.*, AIR 2009 SC 3104, the applicable multiplier is of 17 and not 18 and that the *ex gratia* payment of ₹5 lacs received by Claimant from her employer needs to be

adjusted while computing the quantum of compensation. Thus, it is submitted by Insurer's counsel that compensation granted needs to be suitably reduced.

4. On the contrary, learned counsel for Claimant draws the attention of this Court to deposition of Claimant's employer (PW-9) to point out that Claimant was entitled to 10% increase in salary every year and so, the employment of Claimant was of permanent nature. However, it is submitted that addition of 50% towards *'future prospects'* made by learned Tribunal is inadequate. It is also submitted by Claimant's counsel that Claimant was aged 29 years on the day of the accident and so, the multiplier of 18 has been rightly applied by learned Tribunal.

5. Learned counsel for Claimant further submits that *ex gratia* payment of ₹5 lacs was made by her employer on humanitarian ground and so, it should not be adjusted in the awarded compensation.

6. To seek enhancement of compensation, learned counsel for Claimant submits that addition of 100% towards *'future prospects'* ought to be made as in normal course, Claimant would have lived upto 70 years of age. So, it is submitted that 100% addition towards *'future prospects',* can be granted in exceptional cases as per Supreme Court's decision in *Sarla Verma (supra)*. Learned counsel for Claimant points out that vide order of 4th August, 2015 Claimant's application for additional evidence was allowed and as per verification report of *Dr. Vinod Gandotra*, the medical expenses incurred from the year 2008 till the year 2015, were of ₹2,69,357/- in respect of available medical bills/receipts. It is pointed out that as per medical certificate issued by *Dr. Rajendra Prasad* from Apollo Hospital, Claimant has to undergo physiotherapy for rest of her

life, as she has suffered 100% permanent disability. Thus, it is submitted that lump-sum compensation towards future medical treatment including physiotherapy ought to be granted in view of Disability Certificate of 20th November, 2008 issued after passing of the Award, as it indicates permanent disability of 100% below the chest. Lastly, it is submitted that the compensation granted by learned Tribunal under the non-pecuniary heads needs to be suitably enhanced. Nothing else is urged by either side.

7. In case where Injured was paralyzed below the waist and needed assistance for daily chores, 100% permanent disability was considered to be 100% functional disability by a three Judge Bench of Supreme Court in *Sanjay Verma v. Haryana Roadways,* (2014) 3 SCC 210. In this decision a sum of ₹3,00,000/- was granted under the head of *'future treatment'* and another ₹3,00,000/- under the head of '*pain and 'suffering'*. Supreme Court in *Kavita v. Deepak & Ors. (2012) 8 SCC 604* has granted ₹9,00,000/- as *'physiotherapy expenses'* for the remaining life and '*attendant charges'* granted are ₹6,00,000/-. In an injury case, Supreme Court in *Dinesh Singh v. Bajaj Allianz General Insurance Company Limited & Anr.* (2014) 9 SCC 241 has granted ₹3,50,000/- under the head of '*loss of amenities of life'*.

8. Upon hearing and on perusal of impugned Award as well as the evidence on record, including additional evidence in Claimant's appeal and the decisions cited, I find that in view of Supreme Court's decision in *Sarla Verma (supra)*, the multiplier applicable is of 17 and learned Tribunal has erred in applying the multiplier of 18. Regarding deduction of *ex gratia* payment of ₹5,00,000/- from compensation assessed under the head of *'loss of earning capacity'*, this Court finds that due to

accident in question, Claimant had suffered 100% functional disability as after the accident in question, she is unable to do any work and had to resign from the job and so, ex gratia payment was made by her employer towards service benefits in aforesaid context. So, the *ex gratia* payment of ₹5,00,000/- is not required to be adjusted in the compensation granted under the head *'loss of earning capacity'*.

9. So far as addition towards future prospects is concerned, I find that as per Claimant's service profile of 27th November, 2006, she was appointed in Assistant Manager Cadre and she was confirmed on the said post and an addition of 10% is to be made in the annual salary of Claimant and her date of retirement indicated is 27th March, 2031. Quite evidently, employment of Claimant was stable one. In normal course, she would have lived upto the date of her retirement and so, *'future prospects'* till March, 2031 has to be taken into consideration and so, Claimant is entitled to addition towards *'future prospects'*.

10. A three Judge Bench of Supreme Court in a decision in *Reshma Kumari & Ors. v. Madan Mohan & Anr*. (2013) 9 SCC 65, has made maximum addition of 50% towards future prospects where the employment was of permanent nature. No precedent has been cited to show that addition of more than 50% has been made towards future prospects. In the instant case, I find that service profile of Claimant makes it amply clear that her employment was of permanent nature and so, addition of 50% towards future prospects granted by Tribunal is justified. As per Form-16 of Claimant-Injured issued by employer, her annual income for the assessment year 2003-04 was ₹2,05,571/- and after deduction of tax of ₹14,224/- the net annual income comes to ₹1,91,347/-

. Learned Tribunal has erred in taking the annual income of Claimant-Injured as ₹17,500/- p.m. i.e. ₹2,10,000 p.a. While taking the annual income of Claimant-Injured to be ₹1,91,347/- and by adding 50% towards future prospects and after deducting 1/3rd towards personal expenses, multiplier of 17 is applied and thereafter the '*loss of earning capacity*' is reassesed as under :-

₹1,91,347 + ₹95,674 i.e. ₹287021 minus 1/3rd X 17 = ₹32,52,904/- (rounded off to ₹32,52,905/-)

Thus, the compensation granted under this head is accordingly reduced from ₹37,80,000/- to ₹32,52,905/-.

11. As regards *'physiotherapy'* is concerned, in view of additional evidence led by Claimant, this Court is of the considered view that lifelong physiotherapy for remaining life span is needed by Claimant and so, the medical expenses including physiotherapy would be at least ₹9,00,000/-. It is so said in view of medical certificate of *Dr. Vinod Gandotra*, whereby it is stated that physiotherapy has to be provided to Claimant for her entire life and so, lump-sump compensation of ₹9,00,000/- for physiotherapy ought to be granted. Therefore, under the head of *'physiotherapy expenses'*, Claimant is granted compensation of ₹9,00,000/-.

12. In face of additional evidence led, compensation of ₹2,69,357/-, is granted to Claimant, for *'medical expenses'* incurred during the post Award period. The estimated cost of wheel chair as per quotation from OTTO BOCK is of ₹95,000/-. In the verification affidavit filed by Insurer

on 26th April, 2016, there is no challenge to the estimate given for wheel chair. Judicial notice can be taken note of the fact that normal life of motorized wheel chair is about 10 years. While taking into consideration the multiplier applied, the compensation granted for purchase of *'wheel chair'* is enhanced from ₹1,00,000/- to ₹3,00,000/- and the *'attendant charges',* are also enhanced from ₹1,00,000/- to ₹6,00,000/-. Compensation of ₹1,00,000/- granted under the head of *'pain and suffering'* is certainly on the lower side and it is enhanced from ₹1,00,000/- to ₹3,00,000/-. The '*conveyance charges*' are also increased from ₹25,000/- to ₹1,00,000/- Considering the fact that Claimant has suffered 100% functional disability and is on the wheel chair, the dietary expenses are increased from ₹25,000/- to ₹50,000/- and ₹3,00,000/- are granted for '*future medical treatment*'.

13. While relying upon Supreme Court decisions in *Sanjay Verma* (supra), *Kavita* (supra) & *Dinesh Singh* (supra), the compensation payable to Claimant-Injured under the different heads are re-assessed as below:-

Loss of earning capacity	*₹32,52,905/-*
Wheel chair expenses	*₹3,00,000/-*
Attendant charges	*₹6,00,000/-*
Pain and Sufferings	*₹3,00,000/-*
Dietary expenses	*₹50,000/-*
Conveyance Charges	*₹1,00,000/-*
Medical expenses (already	*₹2,69,357/-*

incurred post Award)	*(rounded off to ₹2,70,000)*
Physiotherapy Expenses	*₹9,00,000/-*
Loss of Amenities	*₹3,50,000/-*
Future medical treatment	*₹3,00,000/-*
Total	***₹64,22,905/-***

14. Consequentially, the compensation granted by learned Tribunal is enhanced from ₹42,30,000/- to ₹64,22,905/-. In the light of a recent decision of Supreme Court in *Shivakumar M. v. The Managing Director, BMTC,* 2017 SCC Online SC 148, the reassessed compensation shall carry interest @ 9% *per annum* from the date of filing of the petition till the date of deposit of the enhanced amount of ₹21,92,905/-. The mode of disbursal of deposited compensation shall be as indicated in this judgment. Insurer is granted six weeks' time to deposit the enhanced compensation with interest with learned Tribunal, who shall ensure that upon maturity of FDRs i.e deposited compensation and the enhanced compensation, is equally invested into ten fixed deposit receipts for five years, which shall be automatically renewed during Claimant's lifetime. The interest accrued on the fixed deposit receipts shall be directly transmitted into the bank account of Claimant-*Menka* on quarterly basis, upon furnishing of her bank account details. In case of any exigency, Claimant shall be at liberty to seek premature release of the said FDRs by filing an application before learned Tribunal.

15. Both the appeals and applications are disposed of while modifying the impugned Award in aforesaid terms. Statutory deposit, if any, be refunded to Insurer as per Rules.

(SUNIL GAUR)
JUDGE

MARCH 17, 2017
s/r