

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

Date of Decision: July 20, 2018

+ **MAC. APP. 182/2013**

AVDESH TIWARI Appellant

Through: Ms. Lipi Thapliyal, Advocate

Versus

NATIONAL INSURANCE CO. LTD. & ORS. Respondents

Through: Ms. Seema Gulati, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 29th September, 2012 grants compensation of ₹21,10,887/- with interest @ 7.5% per annum to appellant/injured- Avdesh, aged 32 years, on account of grievous injury suffered by him in a vehicular accident, which took place on 12th January, 2012. The facts as noticed in the impugned Award are as under:-

“Brief facts necessary for disposal of present application/petition are that on 12.01.2012 at 10:15 p.m, the victim as occupant in car no. HR-26B-9333 being driven by Sh. Santosh Singh/respondent no.3 herein was proceeding on BHS Marg, Sarojini Nagar. The aforesaid car was being driven by its driver in rash and negligent manner and while entering the crossing, the driver lost control over the car as a result, car after crossing went on the extreme side of the road

and struck against the central diving payment, resultantly causing grievous injuries to petitioner.”

2. To render the impugned Award, learned Motor Accident Claims Tribunal (*hereinafter referred to as the “Tribunal”*) has relied upon evidence of injured and as per disability certificate of 6th June, 2012, injured had sustained 100% visual disability. On the strength of evidence recorded, impugned Award has been rendered. The breakup of compensation awarded by Tribunal is as under:-

Loss of future earning	₹16,37,376/-
Medical bills	₹ 8,511/-
Travelling Expenses & Special Diet	₹ 25,000/-
Pain & Suffering	₹ 2,00,000/-
Attendant Charges	₹ 2,40,000/-
Total	₹ 21,10,887/-

3. Learned counsel for appellant-Injured assails impugned Award on the ground that quantum of compensation granted is inadequate and it needs to be suitably enhanced. Learned counsel for appellant-Injured submits that the Tribunal has assessed the income of the Injured on minimum wages but has failed to add 40% towards future prospects. It is submitted by learned counsel for Injured that interest payable on the awarded amount ought to be @ 9% p.a. and not @ 7.5% p.a. as awarded by the Tribunal. To submit so, reliance is placed on Supreme Court’s

Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680.

4. On the contrary, learned counsel for respondent-Insurer supports the impugned Award and maintains that the compensation granted is just and proper.

5. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that the Tribunal has rightly assessed the functional disability as 100% and in view of Supreme Court's decision in *Pranay Sethi (supra)*, addition towards future prospects has to be 40% and the Tribunal has erred in not granting it. In view of aforesaid, 'loss of earning capacity' is re-assessed as under :-

$$₹8,528/- \times 12 \times 16 \times 140/100 = ₹22,92,326/-$$

6. So far as compensation granted under the 'non pecuniary heads' is concerned, I find it to be just and proper.

7. In view of aforesaid, the compensation payable to Injured is re-assessed as under : -

Head of Compensation	Amount
Loss of Earning Capacity	₹22,92,326/-
Medical Expenses	₹ 8,511/-
Special Diet & Conveyance	₹ 25,000/-
Pain & Suffering	₹ 2,00,000/-
Attendant Charges	₹ 2,40,000/-
Total	₹ 27,65,837/-

8. A Three Judge Bench of Supreme Court in a recent decision of *Jagdish v. Mohan and Others*, (2018) 4 SCC 571 has granted interest @ 9% *per annum* on the awarded compensation and so, in the instant case, awarded compensation shall carry interest @ 9% *per annum*.

9. Consequentially, the compensation amount payable stands enhanced from ₹21,10,887/- to ₹27,65,837/-. The enhanced compensation be deposited by Insurer with the Tribunal within four weeks from today. The re-assessed compensation with interest @ 9% *per annum* be disbursed in the ratio and manner as indicated in the impugned Award.

10. With aforesaid directions, this appeal is disposed of.

(SUNIL GAUR)
JUDGE

JULY 20, 2018
SRwt