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

Date of Decision: October 08, 2018

\+ **MAC.APP. 114/2013**

THE NEW INDIA ASSURANCE CO.LTD. ..... Appellant
Through: Mr. J.P.N Shahi, Advocate

Versus

YASHPAL @ KALLU & ORS. .....Respondents
Through: Mr. Nishant Shaiva, Advocate for respondent No.1

\+ **MAC.APP. 839/2018**

YASHPAL @ KALLU ..... Appellant
Through: Mr. Yash Pal Sapra, Advocate

Versus

THE NEW INDIA INSURANCE CO LTD ..... Respondent
Through: Mr. J.P.N Shahi, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 30th November, 2012 grants compensation of ₹15,33,872/- with interest @9% per annum to a Milk Vendor-*Yashpal (hereinafter referred to as the "Injured"),* aged 24 years, on account of grievous injuries suffered by him in a vehicular accident, which took place on 16th August, 2012.

2. In the above captioned first appeal, *The New India Assurance Company Limited (henceforth referred to as the "Insurer")* seeks reduction in the quantum of compensation awarded, whereas in the above captioned second appeal, enhancement of compensation is sought by Injured- *Yashpal*.

3. Since both the appeals arise out of common impugned Award, therefore, with the consent of learned counsel for the parties, both the appeals have been heard together and are being decided by this common judgment. The factual background of this case, as noticed in the impugned Award, is as under:-

> *"Petitioner's case is that on the day of accident he was travelling on Scooter driven by his friend but on reaching Shiv Mandir Pulia, Wazirabad Pull, Timar Pur, Delhi was hit from driver's side by vehicle no. UP 17T 4179 (offending vehicle) driven by respondent no.1 in rash and negligent manner causing grievous injuries. Petitioner was taken to hospital where FIR was lodged and MLC was prepared."*

4. To render the impugned Award, Motor Accident Claims Tribunal *(hereinafter referred to as the "Tribunal")* has relied upon evidence of Injured-*Yashpal (PW-1)* and as per Disability Certificate (Ex.PW1/4), the Injured had suffered permanent disability of 75% in relation to his left lower limb. On the strength of evidence recorded, impugned Award has been rendered. The breakup of compensation awarded by Tribunal to the Injured-*Yashpal* is as under:-

1.	Medical Expenses	₹3,100/-
2.	Special diet and conveyance	₹12,000/-
3.	Attendant charges	₹12,000/-
4.	Expenses for artificial limb	₹2,52,204/-
5.	Loss of income	₹19,968/-
6.	Loss of future income	₹9,34,600/-
7.	Pain and suffering, loss of amenities of life & loss of expectation of life (composite compensation)	₹3,00,000/-
	Total	₹15,33,872/-

5. Learned counsel for Insurer assails impugned Award on the ground that compensation of ₹3,00,000/- granted under the heads of *'pain and suffering, loss of amenities of life* and *loss of expectation of life"* is exorbitant and it needs to be reduced to ₹1,50,000/-. It is further submitted by counsel for Insurer that Insurer is not bound to pay interest on the cost of artificial limb. Hence, reduction in the quantum of compensation awarded by the Tribunal is sought by Insurer.

6. On the other hand, learned counsel for Injured-*Yashpal* refutes the aforesaid stand taken on behalf of Insurer and submits that the compensation granted by the Tribunal is inadequate. It is submitted that keeping in view the nature of work of Injured, his *"functional disability"* ought to be assessed at 75%. It is next submitted that the minimum wages payable to a skilled workman ought to be the basis to assess the *"loss of income"*, as the Injured was possessing license for commercial vehicle. It is pointed out that the Injured used to sell milk while riding the motor

cycle, which he is unable to drive after suffering the injuries in this accident. Lastly, reliance is placed upon decision of this Court of 4th July, 2018 in MAC.APP.861/2017, *Ankit Kumar Vs. The United India Insurance Company Limited & Ors.* to seek lump-sum compensation of ₹4,00,000/- on account of injuries suffered by Injured. So, it is submitted that compensation granted by the Tribunal deserves to be appropriately enhanced.

7. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that Injured in his evidence has not claimed that for the purpose of selling milk, he used to ride the motor cycle. There is no reference by the Injured with regard to his driving license in his evidence. So, I find that the Tribunal has rightly taken the minimum wages payable to an unskilled workman while assessing the income of Injured- *Yashpal* and therefore, his *"loss of income"* has been rightly assessed at ₹19,968/-.

8. As regards *"loss of future income"* of Injured-*Yashpal*, I find that the Tribunal has rightly assessed his *"functional disability"* at 50%, because Injured is unable to ride motor cycle due to amputation of his left leg below the knee. No case for assessing the *"functional disability"* of Injured-*Yashpal* more than or less than 50% is made out in the instant case. Reliance placed upon decision in *Ankit Kumar (Supra)*, is misplaced, as in the said decision lump-sum compensation of ₹4,00,000/- was granted in the case of a minor while relying upon Supreme Court's decision in *Master Malikarjun Vs. Divisional Manager, The National Insurance Company Ltd & Anr.* AIR 2014 SC 736.

9. So far as addition towards *"future prospects"* is concerned, I find that Tribunal has erred in making addition of 30% towards *"future prospects"*. In view of Supreme Court's Three Judge Bench decision in *Jagdish v. Mohan and Others,* (2018) 4 SCC 571, addition of 40% towards *"future prospects"* has to be made. The Tribunal has rightly applied multiplier of 18. Accordingly, the *"loss of earning capacity"* of Injured is re-assessed as under:-

₹6,656/- x 12 x 140/100 x 50/100 x 18 = ₹10,06,387.20/-

(*rounded off to* ₹10,06,388/-)

10. With regard to plea of Insurer seeking exoneration from paying the interest component under the head of *"expenses for artificial limb"*, I find that Injured could have obtained artificial limb only after he had received compensation from the Tribunal and therefore, payment of interest on the compensation awarded under the head of *"expenses for artificial limb"* by the Tribunal is justified. Compensation granted by the Tribunal under the head of *"pain and suffering, loss of amenities of life and loss of expectation of life"* and other heads is found to be adequate and does not call for any alteration.

11. In view of aforesaid, the compensation payable to Injured-*Yashpal* is reassessed as under:-

1.	Medical Expenses	₹3,100/-
2.	Special diet and conveyance	₹12,000/-
3.	Attendant charges	₹12,000/-
4.	Expenses for artificial limb	₹2,52,204/-
5.	Loss of income	₹19,968/-

6.	Loss of future income	₹10,06,388/-
7.	Pain and suffering, loss of amenities of life & loss of expectation of life (composite compensation)	₹3,00,000/-
	Total	₹16,05,660/-

12. Consequentially, the compensation amount payable to Injured-*Yashpal* stands enhanced from ₹15,33,872/- to ₹16,05,660/-. The modified compensation shall carry interest @ 9% *per annum*. Six weeks' time is granted to Insurer to deposit the enhanced compensation with UCO Bank, Delhi High Court Branch, New Delhi. The Registrar General shall ensure that the modified compensation is disbursed forthwith to Injured-*Yashpal* in the manner already indicated in the impugned Award.

13. While modifying the impugned Award in aforesaid terms, the above captioned two appeals are accordingly disposed of.

(SUNIL GAUR)
JUDGE

OCTOBER 08, 2018
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