

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

Date of Decision: July 11, 2018

+ **MAC.APP. 141/2013**

MASTER ANKIT SHARMAAppellant

Through: Mr. Navneet Goyal, Advocate

Versus

HARISH BATRA & ORS.Respondents

Through: Mr. Sameer Nandwani, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 31st October, 2012 grants compensation of ₹13,66,000/- with interest @ 7.5% per annum to respondent/injured-*Master Ankit Sharma* aged 12 years, on account of grievous injury suffered by him in a vehicular accident, which took place on 15th August, 2006. The facts as noticed in the impugned Award are as under:-

“This Judgment-cum-Award shall decide the petition under Section 166 and 140 of Motor Vehicle Act 1988 as amended up to date (hereinafter referred as Act) for grant of compensation of Rs. 50,00,000/- for the injuries suffered by minor petitioner, Master Ankit Sharma (aged about 12 years) son of Shri Jagat Pal Sharma in a road vehicular accident which took place on 15.08.2006 at Gurudwara Road near Malik Tent House, Kotla Mubarakpur, New Delhi involving

car bearing registration no. DL-3C-AA-2961 driven by respondent no. 3, Shri Ravi Malik S/o Shri Krishan Kumar Malik.”

2. To render the impugned Award, learned Motor Accident Claims Tribunal (*hereinafter referred to as “the Tribunal”*) has relied upon evidence of father of injured and Dr. Deepak Kumar Jha and as per evidence of this witness, injured had suffered neurological disability of 91.5%. On the strength of evidence recorded, impugned Award has been rendered. The breakup of compensation awarded by Tribunal is as under:-

1. Compensation for medical expenses and future medical expenses:	Rs. 1,36,000/-
2. Compensation for conveyance:	Rs. 25,000/-
3. Compensation for special diet:	Rs. 50,000/-
4. Compensation for Wheel Chair:	Rs. 50,000/-
5. Compensation for attendant charges:	Rs. 2,00,000/-
6. Compensation for pain, sufferings, loss of marriage prospects/loss of amenities of life etc:	Rs. 4,50,000/-
7. Compensation for permanent physical disability and loss of earning capacity/ loss of studies:	<u>Rs.4,55,000/-</u>
Total:	<u>Rs.13,66,000/-</u>

3. Learned counsel for appellant-Injured seeks enhancement in quantum of compensation granted on the ground that Tribunal has assessed the loss of earning capacity on the basis of notional income whereas it ought to have been assessed on minimum wages payable to an unskilled worker. It is submitted that the compensation granted to Injured under the “*non-pecuniary heads*” is inadequate and it needs to be suitably enhanced. Regarding the rate of interest granted, it is submitted that it ought to be 9%

per annum and not 7.5% *per annum* as granted by the Tribunal. Thus, enhancement of the compensation is sought by learned counsel for Injured.

4. On the contrary, learned counsel for respondent-Insurer supports the impugned Award and submits that the compensation granted is adequate and no case for its enhancement is made out.

5. Upon hearing and on perusal of impugned Award and the evidence on record, I find that though a Coordinate Bench of this Court in *Master Rishabh Aggarwal @ Sonu vs. Sh. Raj Pal Singh & Ors.* 2012 SCC OnLine Del 5541 in a case of minor has assessed the “*loss of future earning capacity*” on minimum wages of a matriculate, but Supreme Court in *Master Mallikarjun vs. Divisional Manager, the National Insurance Company Limited and Anr.* AIR 2014 SC 736 has observed that the only indication in Second Schedule of *the Motor Vehicles Act 1988* for non earning person is to take the notional income as ₹15,000/-.

6. Reliance is placed by appellant’s counsel upon Supreme Court’s decision in *Ankur Kapoor vs. Oriental Insurance Co. Ltd.* (2018) 1 SCC 136 wherein Supreme Court has granted composite compensation of ₹10 lacs on account of “*loss of future earning capacity*” on account of 50% permanent disability. However, this decision is of no avail to the case of appellant as the injured in *Ankur Kapoor (Supra)* was aged 22 years and had bright career prospects whereas the Injured in the instant case was a student of 6th standard. Supreme Court in *Master Mallikarjun (Supra)* while dealing with the case of student aged 12 years has held that an injured, who has sustained more than 90% permanent disability, ought to be granted compensation of ₹6 lacs and the compensation under the head

of “*pain and suffering*”, “*loss of amenities of life*”, *etc.*, has been quantified at ₹3 lacs.

7. In light of afore-referred parameters, compensation under the head of “*loss of earning capacity*”, *etc.*, is enhanced from ₹4,55,000/- to ₹6,00,000/-. The compensation under the head of “*pain and suffering*” and other heads granted by the Tribunal appears to be just and proper. No case for enhancing compensation granted under the other heads is made out.

8. In light of the aforesaid, the compensation payable to appellant is reassessed as under:-

1. Compensation for medical expenses and future medical expenses:	₹ 1,36,000/-
2. Compensation for conveyance:	₹ 25,000/-
3. Compensation for special diet:	₹ 50,000/-
4. Compensation for Wheel Chair:	₹ 50,000/-
5. Compensation for attendant charges:	₹ 2,00,000/-
6. Compensation for pain, sufferings, loss of marriage prospects/loss of amenities of life etc:	₹ 4,50,000/-
7. Compensation for permanent physical disability and loss of earning capacity/ loss of studies:	<u>₹6,00,000/-</u>
Total:	<u>₹15,11,000/-</u>

9. Consequentially, the compensation awarded stands enhanced from ₹13,66,000/- to ₹15,11,000/-. 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, appellant is also entitled to interest @9% *per annum*. The enhanced compensation be deposited by Insurer with the Tribunal within four weeks

from today. The re-assessed compensation shall carry interest @ 9% *per annum* and it be disbursed in the ratio and manner as indicated in the impugned Award. Statutory deposit, if any, be refunded to Insurer.

10. This appeal is disposed of while modifying the impugned Award in aforesaid terms.

(SUNIL GAUR)
JUDGE

JULY 11, 2018

v