* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: September 13, 2018

\+ **MAC.APP. 520/2016**

UNITED INDIA INSURANCE CO LTD. ..... Appellant
Through: Mr. Pankaj Seth, Advocate

Versus

PAPPU DEO YADAV & ORS. ..... Respondents
Through: Mr. Jatinder Kamra, Advocate

\+ **MAC.APP. 117/2018**

PAPPU DEO YADAV ..... Appellant
Through: Mr. Jatinder Kamra, Advocate

Versus

NARESH KUMAR AND ORS. ..... Respondents
Through: Mr. Pankaj Seth, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 4th April, 2016 grants compensation of ₹14,25,400/- with interest @9% *per annum* to *Pappu Deo Yadav (hereinafter referred to as Injured),* aged 20 years, on account of grievous injuries suffered by him in a vehicular accident, which took place on 18th May, 2012.

2. In the above captioned first appeal, United India Insurance Co. Ltd. *(hereinafter referred to as the "Insurer")* seeks exoneration from paying the compensation awarded. Alternatively, Insurer seeks recovery rights against owner of the vehicle in question, whereas in the above captioned second appeal, enhancement of compensation is sought by claimants. 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.

3. The factual background of this case, as noticed in the impugned Award, is as under:-

> *"Brief facts of the case is that on 18.05.2012 injured was going on a bus bearing number UP-15-F-7372 toward Hapur after paying the fare as one of the passenger of the bus. At about 01.30 pm when he reached at Village Sadikpur, PS-Hafizpur, Hapur, Uttar Pradesh, driver of the offending bus bearing number UP-15-F-7372 driven by respondent no.1 in rash and negligent manner while trying to overtake from wrong side, zipped the bus whereby scratching other vehicle plying on the road, which caused dent in the bus due to which injured suffered injuries and immediately removed to Dr. Khan's Rehan hospital and thereafter, AIIMS Trauma Center"*

4. To render the impugned Award, Motor Accident Claims Tribunal *(hereinafter referred to as the "Tribunal")* has relied upon evidence of Injured and as per Disability Certificate of 1st April, 2014 *(Ex. PW1/9),* the injured had suffered permanent disability of 89% in relation to right upper limb. 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	₹11,000/-
2.	Compensation for pain & suffering	₹30,000/-
3.	Compensation for special diet, attendant & Conveyance charges	₹30,000/-
4.	Loss of future earning capacity/ future income	₹11,66,400/-
5.	Compensation for loss of amenities and enjoyment of life	₹15,000/-
6.	Compensation for disfigurement	₹25,000/-
7.	Loss of income during treatment	₹48,000
8.	Future medical expenses	₹1,00,000/-
	Total	₹14,25,400/-

5. Learned counsel for Insurer assails impugned Award on the ground that the Tribunal ought to have not entertained the claim petition, as the Injured was not resident of Delhi. It is submitted that instant case is of contributory negligence as the Injured had struck his hand outside the window and due to his negligence, his right hand had got amputated. Reliance is placed by counsel for Insurer upon Supreme Court's decision in *Anant son of Sidheshwar Dukre Vs. Pratap son of Zhamnnappa Lamzane & Anr.* 2018 (10) SCALE 130 to submit that in a case of injury, no *'future prospects'* are to be granted. It is submitted that the Tribunal has granted ₹1,00,000/- without any basis, to Injured to enable him to obtain artificial limb. It is further submitted by counsel for Insurer that what are the expenses for obtaining artificial limb have not been proved and so, the Insurer is not bound to pay the interest on this amount of ₹1,00,000/-. Lastly, it is submitted by counsel for Insurer that grant of penal interest @12% is unwarranted.

6. On the contrary, learned counsel for Injured refutes the aforesaid stand taken on behalf of Insurer and submits that the compensation

granted is inadequate. Enhancement of compensation is sought on the ground that the Tribunal has erred in taking the *"functional disability"* of the Injured at 45%, whereas it is 100%. It is submitted that the compensation granted under the head of *"non pecuniary heads"* is on the lower side and it needs to be substantially increased. It is further submitted by counsel for Injured that no compensation has been granted to the Injured on account of *"loss of marriage prospects"* though he was unmarried. Reliance is placed upon Supreme Court's decision in *Jagdish v. Mohan and Others,* (2018) 4 SCC 571 to submit that addition towards *"future prospects"* ought to be made. Thus, enhancement of compensation is sought by Injured.

7. Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that copy of Voter Identity Card, Pan Card and Bank Pass Book of the Injured is on record, which reveals that Injured is a resident of Delhi and so, the claim petition filed by Injured has been rightly entertained by the Tribunal. On the basis of copy of the Rent Deed, which is for eleven months, it cannot be said that the Injured is not resident of Delhi. After going through the evidence of Injured, I find that the accident in question had not taken place due to negligence of Injured, as he in his evidence has stated that at the time of accident, his hand was inside the window. The manner in which the accident had taken place, as revealed by the Injured, does not rule out the possibility of Injured sustaining injuries on his right hand, as his right hand was inside the bus and due to the accident, dent was caused to the bus in which Injured was travelling.

8. So far as grant of *"future prospects"* in a case of injury is concerned, Supreme Court in *Jagdish (Supra)*, has made addition towards *"future prospects"* while relying upon Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680. Another Bench of Supreme Court while dealing with the case of injury in *Anant son of Sidheshwar Dukre (Supra)*, has not made any addition towards *"future prospects"*. It is a matter of record that Supreme Court's Constitution Bench in *Pranay Sethi (Supra)*, had not dealt with injury case and so, no addition towards *"future prospects"* can be made.

9. The Tribunal, while assessing the *"loss of earning capacity"* of Injured, has taken his income at ₹8,000/- per month and has added 50% towards *"future prospects"*, while applying the multiplier of 18. The Injured was twenty years of age at the time of accident, therefore, the multiplier applied is found to be correct. The Tribunal has also rightly assessed the physical permanent disability of the Injured at 45% in relation to his right upper limb. In view of the aforesaid, the *"loss of earning capacity"* of Injured is reassessed as under:-

₹8,000/- X 12 X 45/100 X 18 = ₹7,77,600/-

10. The Tribunal has granted compensation of ₹1,00,000/- towards *"future medical expenses"* to enable Injured to obtain an artificial limb. Although there is no estimate on record to conclude as to what would be the cost of artificial limb, but in the facts and circumstances of this case, it is deemed appropriate not to grant any compensation under this head. Instead thereof, Insurer is directed to obtain the cost of artificial limb

from an Agency which is duly recognized by the Government and to ensure that cost of artificial limb is directly remitted into the bank account of the said Agency, to facilitate providing of artificial limb to the Injured.

11. On the face of it, the compensation granted by the Tribunal under the *"non-pecuniary heads",* is found to be inadequate. In the facts and circumstances of this case, the compensation granted to Injured by the Tribunal under the heads of *"pain and sufferings"* and *"loss of amenities and enjoyment of life"* is enhanced from ₹30,000/- and ₹15,000/- respectively to ₹2,00,000/- each. The compensation granted to Injured under the head of *"special diet, attendant & conveyance charges"* are increased from ₹30,000/- to ₹50,000/-. The compensation granted under the head of *"compensation for disfigurement"* is also increased from ₹25,000/- to ₹1,50,000/-. However, compensation granted under the heads of *"medical expenses*" and *"loss of income during treatment"* is found to be just and adequate.

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

1.	Compensation for Medical expenses	₹11,000/-
2.	Compensation for pain & suffering	₹2,00,000/-
3.	Compensation for special diet, attendant & Conveyance charges	₹50,000/-
4.	Loss of earning capacity	₹7,77,600/-
5.	Compensation for loss of amenities and enjoyment of life	₹2,00,000/-
6.	Compensation for disfigurement	₹1,50,000/-
7.	Loss of income during treatment	₹48,000
	Total	₹14,36,600/-

13. Consequentially, the compensation amount payable stands enhanced from ₹14,25,400/- to ₹14,36,600/-, which shall carry interest @ 9% *per annum*. Four weeks' time is granted to Insurer to deposit the enhanced compensation with the Tribunal concerned and it be disbursed forthwith to Injured in the manner already indicated in the impugned Award. Statutory deposit, if any, be refunded to Insurer.

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

(SUNIL GAUR)
JUDGE

SEPTEMBER 13, 2018
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