

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

Date of Decision: October 05, 2018

+ **MAC.APP. 288/2013**

KALAM @ KALAMUDDIN Appellant

Through: Mr. Pratap Singh, Advocate

versus

DINESH & ORS. Respondents

Through: Mr. Arun Yadav, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL)

1. Impugned Award of 7th November, 2012 grants compensation of ₹6,12,261/- with interest @ 7.5% *per annum* to appellant-Kalam (hereinafter referred to as 'Injured') aged 35 years and 7 months, on account of grievous injuries suffered by him in a vehicular accident, which took place on 13th August, 2009. The facts as noticed in the impugned Award are as under:-

“Briefly stated facts of the petition are that on 13.8.2009 at about 7.30 PM, Kalam @ Kalamuddin (hereinafter ‘the petitioner’) was returning back to his residence at Dharmshal situated at Kharkhari Village when a Motorcycle bearing no. HR-36J-1892 Bajaj Pulsar (hereinafter offending vehicle) driven by Respondent No. 1 (in Short R1) with high speed in rash and negligent manner without observing any traffic norms and hit the petitioner from behind. As a result to which he fell down on road and motorcycle ran over his legs. He had sustained grievous injuries i.e. compound fracture on both lower limbs above ankle which caused deformity. He was taken to Rao Tula

Ram Hospital by PCR Van for treatment and there from he was shifted to Deen Dayal Upadhyay Hospital for further management.”

2. To render the impugned Award, learned Motor Accident Claims Tribunal (*hereinafter referred to as “the Tribunal”*) has relied upon evidence of *Kalam (PW1)* and as per the Disability Certificate (*Ex. PW2/A*) of this witness, Injured had suffered 57% permanent disability in relation to both lower limbs. The breakup of compensation awarded to Injured by the Tribunal is as under:-

<i>For Loss of earning on account of disability</i>	<i>₹5,27,261/-</i>
<i>Pain and Suffering</i>	<i>₹40,000/-</i>
<i>Conveyance and Special Diet</i>	<i>₹20,000/-</i>
<i>Loss of Amenities</i>	<i>₹25,000/-</i>
<i>Total</i>	<i>₹6,12,261/-</i>

3. Learned counsel for appellant-*Injured* submits that quantum of compensation granted by the Tribunal is inadequate and it needs to be suitably enhanced. Learned counsel for appellant-*Injured* further submits that prior to this accident, Injured was working as a labourer and due to injuries sustained in this vehicular accident, he is not able to work as he is on crutches and therefore, is unable to earn his livelihood. Thus, it is submitted that the functional disability ought to be assessed as 100%. It is further submitted that addition of 40% towards ‘*future prospects*’ ought to be made. Lastly, it is submitted that the compensation granted under the ‘*non-pecuniary heads*’ is inadequate and it needs to be appropriately enhanced.

4. On the contrary, learned counsel for respondent-*Insurer* supports the impugned Award and maintains that the compensation granted is just and proper and so, this appeal deserves dismissal.

5. Upon hearing and on perusal of impugned Award and the evidence on record, I find that appellant-*Injured* in his evidence has deposed that he cannot walk on his own and he had to hire an attendant for sixteen months and had spent ₹1,00,000/- on his treatment, travelling allowance, etc.. However, no supporting evidence is on record. Injured is illiterate and in view of his medical record, judicial notice can be taken of the fact that he must have incurred medical expenses of at least ₹50,000/- on his treatment and at least ₹30,000/- towards conveyance charges. Accordingly, compensation of ₹50,000/- towards '*medical expenses*' and ₹30,000/- towards '*conveyance charges*' is granted to appellant-*Injured*.

6. During the course of hearing, the photograph of Injured was shown to the Court by his counsel, which reveals that he is on crutches. In view of the medical Disability Certificate (*Ex. PW2/A*) of the Injured on record, it can be safely assumed that he is unable to walk without crutches. The Tribunal has taken the functional disability of Injured as per his Disability Certificate. I find no reason to take a different view. There is no justification to assess the functional disability of Injured at 100%. On the day of the accident, the Injured was aged 35 years and 7 months and was working as a labourer and so, the Tribunal has rightly assessed his income on minimum wages payable to an unskilled worker. So, 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*' is made. The Tribunal has rightly applied multiplier of 15.

Accordingly, the '*loss of earning capacity*' of Injured is reassessed as under:-

$$\text{₹}3,953/- \times 12 \times 140/100 \times 15 \times 57/100 = \text{₹}5,67,808.92/-$$

(rounded off to ₹5,67,809/-)

7. So far as the compensation granted to appellant-*Injured* by the Tribunal under the '*non-pecuniary heads*' is concerned, I find it to be on lower side. Accordingly, compensation of ₹40,000/- granted by the Tribunal under the head of '*pain & suffering*' is enhanced to ₹80,000/-, whereas compensation of ₹25,000/- granted by the Tribunal under the head of '*loss of amenities*' is enhanced to ₹40,000/-. In view of the above, the compensation granted to Injured is reassessed as under:-

For Loss of earning capacity	₹5,67,809/-
Pain and Suffering	₹80,000/-
Conveyance and Special Diet	₹30,000/-
Loss of Amenities	₹40,000/-
Medical Expenses	₹50,000/-
Total	₹7,67,809/-

8. Consequentially, the compensation payable to appellant-*Injured* stands enhanced from ₹6,12,261/- to ₹ 7,67,809/-. 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-*Injured* is also entitled to interest @ 9% *per annum*. The enhanced compensation be deposited by Insurer with the Tribunal within six weeks from today and thereafter, the modified

compensation as per this judgment with interest @ 9% per annum be released in the manner as indicated in the impugned Award.

9. While modifying the impugned Award in aforesaid terms, the above captioned appeal is accordingly disposed of.

(SUNIL GAUR)
JUDGE

OCTOBER 05, 2018

v