

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

Date of Decision: July 23, 2018

+ **MAC. APP. 253/2013**

ROYAL SUNDARAM ALLIANCE INSURANCE.....Appellant

Through: Mr. Pankaj Gupta, Advocate for
Ms.Suman Bagga, Advocate

Versus

BABU HASSAN AND ORS.

.....Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 10th January, 2013 grants compensation of ₹10,47,457/- with interest @ 9% per annum to Injured- *Babu Hassan*, aged 52 years, who was doing embroidery work, on account of grievous injury suffered by him in a vehicular accident, which took place on 5th June, 2010. The facts as noticed in the impugned Award are as under:-

“The brief facts necessary for decision have been detailed by the petitioner, Babu Hassan, stating on 5.6.2010, when he visited Plot No.225, Phase-I Udyog Vihar, Gurgaon in pursuance of his business as being an embroider, he is running the business under the trade-name of Reena Fashions and at about 9.30 PM while he was loading the goods in a tempo and was in the process of tying it with rope, he was hit by a crane (the offending vehicle), bearing registration No. HR 55 J-4595, which was being piled by its

driver, in rash and negligent manner. As a result, he suffered compound fracture Grade-I of left leg besides, abrasions, wound and other injuries on other body parts. He was removed immediately to Civil Hospital, Gurgaon where his MLC was prepared and thereafter, he was shifted to Safdarjung Hospital and remained hospitalized from 6.6.2010 to 7.7.2010 in which process, he underwent ORIF and an implant was inserted in his left femur by way of surgery on 29.6.2010. Despite the above, his leg did not unite and he underwent replastering on 14.7.2010 and on 28.7.2010. He was advised rest for 16 weeks and continuous dressing from time to time. On 28.8.2010, he underwent another replastering and was advised to walk only with support. It is stated that the injury were so grave that he lost mobilization and also went through the physiotherapy for a long period. As a result of the injuries, it is claimed that he suffered disability.”

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 (*Ex. PW2/A*), Injured had suffered 80% permanent disability in relation to left lower limb. On the strength of evidence recorded, impugned Award has been rendered. The breakup of compensation awarded by Tribunal is as under:-

Treatment expenses	₹20,692/-
Pain & Suffering	₹50,000/-
Diet & Conveyance	₹30,000/-
Attendant’s charges	₹10,000/-
Loss of income	₹51,584/-
Disability	₹8,85,181/-
Total	₹10,47,457/-

3. Learned counsel for appellant-*Insurer* assails impugned Award on the ground that the Tribunal has erred in assessing the functional disability at 80%. Attention of this Court is drawn to evidence of *Dr. Joginder Kumar (PW-2)*, who has categorically deposed that despite the disability suffered by the injured, he can do sitting job and embroidery work and can walk with the help of stick, etc. So, it is submitted that the “*functional disability*” ought to be assessed at 40%. Counsel for appellant-*Insurer* submits that the Tribunal has rightly assessed the income of injured on minimum wages but has erred in making addition of 30% towards “*future prospects*”. Reliance is placed upon Supreme Court’s Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680 to submit that addition towards “*future prospects*” ought to be 10%, as Injured was aged 52 years on the day of accident. Lastly, it is submitted that quantum of compensation granted ought to suitably reduced.

4. As per order of 22nd May, 2013, respondent-*Injured* has been served, as *Mr. Vijay Kumar Wadhwa*, Advocate, had appeared on his behalf and had undertaken to file his Power of Attorney/ *vakalatnama*. However, no *vakalatnama* has been filed on behalf of first respondent. Appellant’s counsel submits that *Mr. Vijay Kumar Wadhwa*, counsel for first respondent was informed about hearing of this appeal. However, there is no appearance on behalf of respondent-*Injured*.

5. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that in view of evidence of *Dr. Joginder Kumar (PW-2)*, the Tribunal has erred in assessing the “*functional disability*” at 80%, as he has categorically stated that the

injured can do sitting job, embroidery work and can walk with the help of a stick. So, in such a case, “*functional disability*” should not be assessed more than 50%. Accordingly, the “*functional disability*” of injured is assessed at 50%.

6. So far as addition towards “*future prospects*” is concerned, I find that in view of Supreme Court’s decision in *Pranay Sethi (Supra)*, the addition towards “*future prospects*” has to be 10% and not 30%, as adopted by the Tribunal. In view of aforesaid, the “*loss of dependency*” is reassessed as under:-

$$₹6,448 \times 12 \times 110/100 \times 50/100 \times 11 = ₹4,68,124/-$$

7. Supreme Court in *Reshma Kumari & Ors. v. Madan Mohan & Anr.*, (2013) 9 SCC 65 has reiterated that it is the obligation of the Court to ensure that the compensation granted is just, fair and proper. Accordingly, the compensation granted under the head of “*pain and suffering*” is enhanced from ₹50,000/- to ₹75,000/-. The Tribunal has erred in not granting compensation under the head of “*loss of amenities of life*” and therefore, it is deemed appropriate to award compensation of ₹1,00,000/- under the head “*loss of amenities of life*”.

8. Consequentially, the re-assessed compensation payable to respondent-*Injured* is as under:-

Treatment expenses	₹20,692/-
Pain & Suffering	₹75,000/-
Diet & Conveyance	₹30,000/-
Attendant’s charges	₹10,000/-
Loss of income	₹51,584/-

Loss of Earning Capacity due to Disability	₹4,68,124/-
Loss of amenities of life	₹1,00,000/-
Total	₹7,55,400/-

9. Resultantly, the compensation amount payable to respondent-*Injured* stands reduced from ₹10,47,457/- to ₹7,55,400/-. The modified compensation alongwith interest be released to respondent-*Injured* in the manner already indicated in the impugned Award. Statutory deposit alongwith excess deposit, if any, be refunded to appellant-*Insurer*.

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

(SUNIL GAUR)
JUDGE

JULY 23, 2018

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