

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

Date of Decision: August 27, 2018

+ **MAC.APP. 267/2013**

KUMARI SEEMAAppellant

Through: Mr. Shrey Chathly, Advocate

versus

PREM PRAKASH DUBEY & ORS.Respondents

Through: Mr. J.P.N. Shahi, Advocate for
respondent No. 3

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 16th January, 2013 grants compensation of ₹2,16,421/- with interest @ 7.5% p.a. to student- *Kumari Seema*, aged 15 years, on account of grievous injury suffered by her in a vehicular accident, which took place on 24th July, 2010. The facts, as noticed in the impugned Award, are as under:-

“INJURED (Ms. Seema- aged about 14 years and a student of 9th standard-petitioner) through his father/natural guardian Mr. Rishi Pal claims compensation to tune of Rs. 5,00,000/- (five lacs only) with the averments that on 24.07.10 at about 03:30 p.m. petitioner along with her father was going from her residence to Vijay Nagar, Ghaziabad on motorcycle being driven by her father with due precaution and at a normal speed. As alleged, when petitioner reached flyover of Shahdara, at the same time a Tata-407 bearing registration no. DL-1LE-6105, which was being driven in a rash and negligent manner and at a very high speed, came

from behind and hit the motorcycle on which the petitioner and her father were traveling. Resultantly petitioner & her father fell down on the road and petitioner allegedly sustained multiple fracture in her left shaft of femur, clavicle and various other injuries on all over her body as per MLC and treatment records. ”

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 as per Disability Certificate of 5th September, 2012 (*Ex. PW1/P*), *Seema* (*hereinafter referred to as Injured*) had suffered permanent disability of 27% in relation to left lower limb. The breakup of compensation awarded by the Tribunal to the Injured, is as under:-

Loss of future earning (₹15,000/-X18X 15%)	₹40,500.00
Medical Bills	₹11,921.00
Pain & Sufferings	₹50,000.00
Attendant Charges(Rs. 2000 X 12)	₹24,000.00
Conveyance & Special Diet (without bills)	₹18,000.00
Loss of amenities/Marriage Prospects	₹50,000.00
Loss of expectation of life	₹10,000.00
Loss of Studies	₹12,000.00
Total	₹2,16,421.00/-

3. Learned counsel for appellant-*Injured* seeks enhancement of compensation on the ground that the Tribunal has erred in not making any addition towards '*future prospects*'. It is also submitted that the income of the Injured ought to have been assessed on minimum wages payable to a matriculate and not on notional basis. On behalf of injured, it is submitted that the compensation granted under the '*non pecuniary heads*'

is on lower side and it needs to be suitably enhanced. Thus, enhancement of compensation is sought by counsel for appellant-*Injured*.

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

5. Upon hearing and on perusal of impugned Award and the evidence on record, I find that in view of evidence of Injured and the medical evidence on record, Tribunal has rightly assessed the functional disability of Injured at 15% and since Injured was a student of 9th class, therefore, the Tribunal has rightly assessed the income of Injured on notional basis. However, the Tribunal has erred in not making any addition towards '*future prospects*'. In view of Supreme Court's Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680, addition of 40% towards '*future prospects*' is made. Accordingly, the "*loss of future earning capacity*" of Injured is re-assessed as under:-

$$₹15,000/- \text{ p.a.} \times 15/100 \times 18 \times 140/100 = ₹56,700/-$$

6. So far as compensation granted to Injured by the Tribunal under the *non-pecuniary* heads is concerned, I find it to be adequate.

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

Loss of future earning capacity	₹56,700.00
Medical Bills	₹11,921.00
Pain & Sufferings	₹50,000.00
Attendant Charges	₹24,000.00
Conveyance & Special Diet	₹18,000.00

Loss of amenities/Marriage Prospects	₹50,000.00
Loss of expectation of life	₹10,000.00
Loss of Studies	₹12,000.00
Total	₹2,32,621.00

8. Consequentially, the compensation payable to Injured stands enhanced from ₹2,16,421/- to ₹2,32,621/-. Six weeks' time is granted to respondent-*Insurer* to deposit the enhanced compensation with the Tribunal concerned. 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 re-assessed compensation shall carry interest @ 9% *per annum* and it be disbursed to Injured in the manner as indicated in the impugned Award.

9. While modifying the impugned Award in aforesaid terms, this appeal is disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 27, 2018

v