

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

Date of Decision: July 11, 2018

+ **MAC.APP.95/2013**

ORIENTAL INSURANCE CO. LTD. Appellant

Through: Mr. A.K. Soni, Advocate

Versus

DINESH SHARMA & ORS. Respondents

Through: Mr. Ankit Jain, Advocate

+ **MAC.APP. 351/2013**

DINESH SHARMA Appellant

Through: Mr. Ankit Jain, Advocate

Versus

THE ORIENTAL INSURANCE CO. LTD. & ORS. .. Respondents

Through: Mr. A.K. Soni, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

1. Impugned Award of 19th September, 2012 grants compensation of ₹18,73,100/- with interest @9% per annum to injured- *Dinesh Sharma*, aged 19 years, on account of grievous injury suffered by him in a vehicular accident, which took place on 14th January, 2009. Vide order of 11th December, 2012, an arithmetic error in the impugned Award was

corrected by the Motor Accident Claims Tribunal (*henceforth referred to as the "Tribunal"*) and as a result thereof, instead of ₹11,39,100/-, sum of ₹20,39,100/- was granted towards the expenses occurred for becoming a Commercial Pilot. Thus, the total compensation payable to injured also stands corrected from ₹18,73,100/- to ₹27,73,100/-.

2. In the above captioned first appeal, reduction of quantum of compensation granted to injured is sought, whereas in the above captioned second appeal, enhancement of compensation is sought by the injured. Since both the appeals arise out of common impugned judgment, 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:-

"2). Briefly the facts are that on 14.01.09 the petitioner was going to take his special class for Technical (General) examination to be held on 20.01.09 at Saket on his motorcycle. When he reached near Moti Bagh flyover, a truck came at a very high speed and hit his motorcycle from behind. Due to sudden impact, he fell down and sustained injuries on his head and chest. He was taken to AIIMS Trauma Centre where he remained for four days. He was operated on his head. Due to the injuries, he could not appear in the examination held on 20.01.09.

3.) He was a brilliant student. He had joined EBS Aviation Training Centre for CPS ground subjects and deposited a fee of Rs.49000/-. After three months classes, he registered himself with Yash Air Limited, Ujjain, MP for flying costing a package of

Rs.19,75,000/-. He did his first Air Flying experience on 13.10.07 and on 15.10.07 he got student pilot license (SPL) and deposited Rs.8500/-. By 12.01.08, he had completed 50 hours of flying. He started preparation for the ground subject examination to be conducted by DGCA for which he took special classes and paid Rs.10,000/-. He also cleared class II Medical Test on 20.08.08. He appeared in four ground subject examination and cleared one examination. He did 38 hours of flying in Ujjain and thus had a flying experience of 88 hours. In July, 2008, he passed another subject and in October, 2008 he passed the remaining subjects. He also cleared Radio Telephony examination and was issued RTR license on 25.11.08 for which he deposited Rs.15,000/- as fee. It was stated that to become a commercial pilot, flying experience of 200 hours is required. He had already completed 88 hours. Had he been completed flying experience of 200 hours, he would have been paid Rs.2.0 lacs per month. It was stated that due to the accident, he was declared temporarily unfit by DGCA.”

4. To render the impugned Award, Motor Accident Claims Tribunal (*hereinafter referred to as the “Tribunal”*) has relied upon evidence of injured and Medical Assessment Record (*Ex.PW1/7*), vide which injured, who was a Trainee Pilot, has been certified to be *permanently unfit for flying*. The breakup of compensation awarded by Tribunal is as under:-

Medical expenses	₹7,000/-
Pain & Sufferings and Enjoyment of life	₹ 2,00,000/-
Special diet, conveyance & attendant	₹ 27,000/-

Loss of expenditure and career prospects	₹ 25,39,100/- (₹20,39,100+₹5,00,000)
Total	₹ 27,73,100/-

5. Learned counsel for Insurer assails impugned Award on the ground that injured had failed to get any doctor examined to establish his inability to pursue Pilot Training Course after the accident and there is no ‘*Disability Certificate*’ indicating any deformity. Counsel for Insurer submits that the injured has passed B.Tech (Civil) engineering course and so, compensation granted under the head of “*loss of expenditure and career prospects*” is unjustified. It is submitted by counsel for Insurer that career of B.Tech (Civil) is no less than career of a Pilot and as Civil Engineer, injured would be able to get a package of around ₹50,000/- per month and there is no guarantee of getting a job after having completed training of commercial pilot, and so, as a Civil Engineer, injured would have better future prospects even after superannuation. Lastly, counsel for Insurer submits that compensation of ₹5,00,000/- granted towards “*loss of career prospects*” is wholly unjustified and no case for grant of expenses incurred to become a commercial pilot is made out.

6. On the contrary, learned counsel for injured submits that as per Medical Assessment Record (*Ex. PW1/7*), injured has been certified to be *permanently unfit for flying*. On the aspect of functional disability, learned counsel for injured relies upon decision in *Rekha Jain Vs. National Insurance Company Limited & ors.* (2013) 8 SCC 389. He also relies upon Supreme Court’s decision in *Arvind Kumar Mishra Vs. New India Assurance Company Limited & Anr.* (2010) 10 SCC 254 to seek

addition towards future prospects. Learned counsel for injured submits that the compensation of ₹5,00,000/- granted towards “*loss of career prospects*” is inadequate and the Tribunal has erred in not granting compensation towards “*future prospects*”. It is submitted by counsel for injured that as a Commercial Pilot, injured would have earned ₹2,00,000/- per month, whereas as a Civil Engineer, he is earning ₹35,000/- to ₹40,000/- per month only. So, it is submitted that the quantum of compensation granted deserves to be suitably enhanced.

7. Upon hearing and on perusal of impugned Award, evidence on record and decisions cited, I find that injured was 19 years of age on the date of accident and was holding Student Pilot License and was undergoing an aviation training and had incurred heavy expenses to become a Commercial pilot. Neither there is evidence of any doctor nor there is any Disability Certificate regarding the head injuries suffered by injured, but the Medical Assessment Record (*Ex.PW1/7*) has been issued by a Medical Examiner, which has declared injured *permanently unfit for flying* on account of head injuries sustained by the injured in this accident. Even if there is no evidence on record regarding salary of a Pilot and a Civil Engineer, but judicial notice can be taken note of the fact that Commercial Pilots do earn around ₹1,00,000/- per month and Civil Engineers would not earn even half of it.

8. In view of drastic career alteration, the compensation of ₹5,00,000/- awarded by the Tribunal under the head of “*loss of career prospects*” appears to inadequate. It is true that the expenses incurred for undergoing a training cannot be reimbursed in such like cases but I find

that the “*loss of career prospects*” in the case of injured, justifies enhancement of compensation. The disparity in the earning capacity of a Commercial Pilot and a Civil Engineer justifies quantification of “*loss of career prospects*” at ₹25,00,000/- on conservative basis.

9. Since the injured was still a student, therefore, he is taken to be as a non-earning person and thus, no addition towards “*future prospects*” can be made. Supreme Court’s decision in *Rekha Jain (Supra)*, related to a film actress, whose permanent disability was taken to be 100%, whereas in the instant case, there is no formal declaration of any disability suffered by the injured. So, reliance placed by counsel for Injured upon Supreme Court’s decision in *Rekha Jain (Supra)* is of no assistance to the case of Injured. However, due to injuries sustained in this accident, there has been a forceful alteration of career option of Injured, for which compensation under the head of “*loss of career prospects*” has been already granted.

10. In view of Supreme Court’s decision in *Master Malikarjun Vs. Divisional Manager, The National Insurance Company Ltd & Anr. AIR 2014 SC 736*, compensation granted under the head of “*pain & sufferings and enjoyment of life*” is enhanced from ₹2,00,000/- to ₹3,00,000/- but compensation granted under the other heads, do not call for any alteration.

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

Medical expenses	₹7,000/-
Pain & Sufferings and Enjoyment	₹3,00,000/-

of life	
Special diet, conveyance & attendant charges	₹27,000/-
Loss of expenditure and career prospects	₹ 25,00,000/-
Total	₹ 28,34,000/-

12. Consequentially, the compensation amount payable stands enhanced from ₹27,73,100/- to ₹28,34,000/-. The enhanced compensation be deposited by the Insurer with the Tribunal within four weeks from today. The awarded compensation with interest be disbursed to injured in the ratio and manner as indicated in the impugned Award. Statutory deposit, if any, be refunded to Insurer.

13. With aforesaid directions, the above captioned first appeal i.e. MAC.APP 95/2013 is dismissed, whereas the above captioned second appeal MAC.APP. 351/2013 is allowed in abovesaid terms.

14. The above captioned two appeals are accordingly disposed of.

(SUNIL GAUR)
JUDGE

JULY 11, 2018

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