

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

Date of Decision: September 28, 2018

+ **MAC.APP. 320/2013**

THE NEW INDIA ASSURANCE CO LTDAppellant

Through: Mr Pankaj Seth, Advocate.

Versus

DEEPAK ARORA & ORS.Respondents

Through: Mr. Kartik Rai, Advocate for
respondents No.2 & 3.

+ **MAC.APP. 336/2013**

THE NEW INDIA ASSURANCE CO LTDAppellant

Through: Mr Pankaj Seth, Advocate.

Versus

PHOOL KUMARI & ORS.Respondents

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above captioned two appeals arise out of separate Awards of even date i.e. 11th February, 2013, vide which the Motor Accident Claims Tribunal (*henceforth referred to as the "Tribunal"*) has awarded compensation of ₹7,10,448/- with interest @ 9% p.a. to legal heirs of a Supervisor-*Rajeev*, aged 42 years, in a vehicular accident which took

place on 27th October, 2008.

2. In this unfortunate accident in question, a driver-*Deepak*, aged 25 years, was grievously injured and the Tribunal vide separate Award of 11th February, 2013 has granted compensation of ₹4,15,674/- with interest @ 9% p.a. to him, which is under challenge in the above captioned first appeal.

3. In the above captioned appeals, Insurer assails the impugned Awards on the ground that quantum of compensation granted by the Tribunal to Injured-*Deepak* and legal heirs of deceased-*Rajeev* is exorbitant.

4. Since these two appeals arise out of one vehicular accident, therefore, with the consent of learned counsel for the parties, these appeals have been heard together and are being decided by this common judgment.

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

“On the unfortunate day of 27.10.2008 at about 10.30 AM the petitioner was going to Hissar and driving the Indica Car No.DL 8CM 5424 from Delhi to Hissar with his owner and their employee of the Jyoti Associates. When the petitioner reached at Pipe Factory Cantt Hissar near Gate No. 3, the offending vehicle truck bearing No. HR 38C 8523 coming from opposite side and the offending driver of the offending vehicle tried to overtake for heading the another vehicle from the opposite side and in the negligent manner hit the car of the petitioner. Due to the said accident, the petitioner sustained grievous injuries. The said accident occurred due to rash

and negligent driving of the respondent No. 1. The FIR was registered in respect of this accident vide FIR No. 889/08, PS Hissar, Sadar (Haryana), U/s/ 279/338/304A IPC.”

6. To render the impugned Award, the Tribunal has relied upon evidence of legal heirs of deceased and the Injured as well as other evidence on record.

7. The Tribunal has assessed income of the Injured on minimum wages of ₹4,107/- payable to skilled persons and has made addition of 30% towards ‘future prospects’ and multiplier of 18 has been applied. As per Disability Certificate of 30th July, 2011 sent to the Tribunal, the Injured has suffered permanent disability of 36% in relation to right upper limb and right lower limb. There is another Disability Certificate of 26th May, 2012 (Ex.PX), which reveals that Injured had suffered permanent disability of 23% in relation to right upper limb. The Tribunal has assessed the functional disability to be 23% in relation to the whole body.

8. The breakup of compensation awarded by the Tribunal to Injured-*Deepak* is as under:-

1	Expenses on medicines etc.	₹65,000/-
2	Loss of Income	₹16,428/-
3	Loss of future income	₹2,65,246/-
4	Special diet expenses	₹7,000/-
5	Conveyance charges	₹7,000/-
6	Pain, suffering, mental shock and trauma	₹25,000/-
7	Loss of amenities etc.	₹30,000/-
Total		₹4,15,674/-

9. The breakup of compensation awarded by the Tribunal to legal heirs of deceased-*Rajeev Kumar* is as under:-

1.	Loss of dependency	₹5,60,448/-
2.	Funeral charges	₹10,000/-
3.	Loss of Estate	₹10,000/-
4.	Loss of consortium	₹10,000/-
5.	Loss of love, company and affection etc.	₹1,00,000/-
6.	Loss of gratuitous services	₹20,000/-
	Total	₹7,10,448/-

10. The challenge to the impugned Awards by learned counsel for Insurer is on the ground that the Tribunal has erred in making addition of 30% towards '*future prospects*' of Injured-*Deepak*. In support of the above submissions, reliance is placed upon Supreme Court's decision in *Anant son of Sidheshwar Dukre Vs. Pratap son of Zhamnnappa Lamzane & Anr.* 2018 (10) SCALE 130. It is further submitted that the functional disability of the Injured ought to be assessed at 12%. Attention of this Court is drawn to evidence of Dr.P.K.Aggarwal (*PW-1*) to point out that the Injured can do all normal work and so, there was no loss of earning capacity.

11. In case of deceased-*Rajeev*, it is submitted by Insurer's counsel that the Tribunal has erred in making addition of 30% towards '*future prospects*'. Attention of this Court is drawn to 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 prospect ought to be 25%. It is next submitted by learned counsel for the Insurer that the compensation granted by the Tribunal under the

head of “*loss of love, company and affection*” ought to be disallowed in the light of decision of Supreme Court’s Constitution Bench decision in *Pranay Sethi (Supra)*. It is also submitted by Insurer’s counsel that there is no basis to grant compensation of ₹20,000/- to legal heirs of deceased under the head of “*loss of gratuitous services*”. Thus, it is submitted by learned counsel for the Insurer that the quantum of compensation granted to legal heirs of the deceased- *Rajeev* deserves to be suitably reduced.

12. On the other hand, Counsel for Injured-*Deepak* submits that compensation awarded by the Tribunal is just and proper and the appeals are liable to be dismissed. It is evident from order of 3rd October, 2013 in MAC.APP. 336/2013, that despite service, none had appeared on behalf of respondent- *Claimants*.

13. Upon hearing and on perusal of impugned Awards, evidence on record and the decisions cited, I find that Injured– *Deepak* was aged 25 years and the Tribunal has rightly assessed his income on the basis of minimum wages payable to a skilled person. No doubt, a two Judge Bench of Supreme Court in *Anant Son of Sidheshwar Durke (supra)* while dealing with a case of injured, had not considered the aspect of future prospects but a Three Judge Bench of Supreme Court in a recent decision of *Jagdish v. Mohan and Others*, (2018) 4 SCC 571, while dealing with the case of an Injured, has made addition towards future prospects of the Injured. In the instant case, in view of Supreme Court’s decision in *Jagdish (supra)*, addition of 40% towards “*future prospects*” ought to have been made. However, since no cross-objections have been filed, therefore, addition of 30% towards “*future prospects*” of the injured

made by the Tribunal is not being modified.

14. Upon scrutiny of evidence of Dr. P.K.Aggarwal, (*PW-1*), I find that it is not clear from his evidence as to what normal work the Injured can do. Pertinently, the Injured-*Deepak* is a driver by profession and as per latter Disability Certificate (*EX.PX*) of 26th May, 2012, he has permanent traumatic stiffness of right elbow to the extent of 23%. So, it cannot be said that there is no loss of earning capacity to Injured – *Deepak*. Considering the fact that the injured – *Deepak* is a driver by profession, I find that the Tribunal has rightly assessed the functional disability to be 23%. Such a view is taken because Injured- *Deepak* in his evidence has categorically asserted that due to the injury sustained in this accident, he has suffered 100% permanent disability in relation to his right hand and a steel rod has been inserted in his right leg. Since there is no worthwhile cross-examination of Injured-*Deepak* on this aspect, therefore, this Court is of the considered view that the Tribunal has rightly assessed the income of the injured as payable to a skilled worker and the functional disability assessed by the Tribunal at 23% is maintained for want of cross-objections by the Injured - *Deepak*.

15. The Tribunal has rightly applied the multiplier of 18 and the loss of earning capacity of the injured has been correctly assessed at ₹2,65,246/-. The “*loss of income*” suffered by Injured-*Deepak* due to injuries sustained in this accident is rightly computed at ₹16,428/-. The compensation granted under the other heads is also found to be adequate. No case for reduction in the quantum of compensation granted to the Injured – *Deepak* is made out. Hence, the compensation awarded to

Injured-*Deepak* by the Tribunal is maintained.

16. As regards compensation granted to legal heirs of deceased – *Rajeev* by the Tribunal is concerned, I find that in view of Supreme Court’s Constitution Bench decision in *Pranay Sethi (Supra)*, addition of 25% towards “*future prospects*” has to be made and the Tribunal has erred in making addition of 30% towards “*future prospects*” of the deceased. Thus, compensation granted to legal heirs of deceased- *Rajeev* under the head “*loss of dependency*” is accordingly re-assessed as under-

$$₹3849/- \times 12 \times 125/100 \times 14 \times 2/3 = ₹5,38,860/-$$

17. In view of Supreme Court’s decision in *Pranay Sethi (Supra)*, compensation of ₹1,00,000/- granted by the Tribunal to legal heirs of the deceased under the head “*loss of love, company and affection*” is disallowed. I find that the Tribunal has erred in granting ₹20,000/- to legal heirs of the deceased under the head of “*loss of gratuitous services*”, as there is no basis to grant compensation under this head. For want of cross-objections by legal heirs of the deceased, compensation granted under ‘*non-pecuniary heads*’ is maintained. Accordingly, compensation payable to the legal heirs of deceased-*Rajeev* is re-assessed as under:-

1.	Loss of dependency	₹5,38,860/-
2.	Funeral expenses	₹10,000/-
3.	Loss of Estate	₹10,000/-
4.	Loss of consortium	₹10,000/-
	Total	₹5,68,860/-

18. Consequently, compensation granted by the Tribunal to Injured-*Deepak* is maintained. However, compensation awarded to legal heirs of

deceased-*Rajeev* by the Tribunal is reduced from ₹7,10,448/- to ₹5,68,860/-. The modified compensation shall carry interest at the rate of 9% per annum and it be disbursed to Injured –*Deepak* and legal heirs of the deceased-*Rajeev* forthwith in the ratio as indicated in the impugned Award. Statutory deposit along with the excess deposit be refunded to Insurer.

19. While modifying the impugned Awards in the above terms, the above-captioned two appeals are accordingly disposed of.

(SUNIL GAUR)
JUDGE

SEPTEMBER 28, 2018

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