

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

Date of Decision: September 11, 2018

+ **MAC. APP. 348/2013**

HDFC ERGO GENERAL INSURANCE CO LTDAppellant

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

Versus

YOGESH SINGH AND ORS.Respondents

Through: Mr. Arun Yadav, Advocate for
respondent No.1

+ **MAC. APP. 442/2013**

YOGESH SINGHAppellant

Through: Mr. Arun Yadav, Advocate

Versus

AMAR SINGH & ORS.Respondents

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

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 14th January, 2013 grants compensation of ₹26,70,600/- with interest @ 9% *per annum* to injured-Yogesh, aged 23 years, on account of grievous injuries suffered by him in a vehicular accident, which took place on 9th October, 2004.

2. In the above captioned first appeal, *HDFC ERGO General*

Insurance Co. Ltd. (hereinafter referred to as 'Insurer') seeks reduction in the quantum of compensation, whereas in the above captioned second appeal, enhancement of compensation is sought by *Yogesh (hereinafter referred to as '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:-

“Brief facts as epitomized in the claim petition are that on 09.10.2004 at about 2.00 PM the petitioner was going from Navsena Bhawan to Gulmohar Park, New Delhi and when he reached near Netaji Nagar Bus stop on Africa Avenue Road, all of a sudden a Honda City car bearing no. DL-2FCC-0060 being driven by its driver namely Amar Singh in rash and negligent manner came and hit the claimant resultantly causing grievous injuries on his person. The victim was removed from the place of accident to Safdarjung Hospital for treatment.”

4. To render the impugned Award, Motor Accident Claims Tribunal (*hereinafter referred to as the “Tribunal”*) has relied upon evidence of Injured and as per Disability Certificate (*Ex.PW-2/10*), the Injured had suffered permanent disability of 40% 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:-

<i>Loss of future earning</i>	<i>₹25,05,600/-</i>
<i>Travelling expenses, Special Diet and other miscellaneous expenses</i>	<i>₹40,000/-</i>
<i>Pain and sufferings</i>	<i>₹50,000/-</i>

<i>Damages as to enjoyment of life and disfigurement</i>	₹75,000
<i>Total</i>	₹26,70,600/-

5. Learned counsel for Insurer assails impugned Award on the ground that the Tribunal has erred in granting compensation under the head of '*loss of future earning*' as there is no loss caused to the Injured due to the injuries suffered by him in this accident. It is submitted by Insurer's counsel that no compensation under the aforesaid head is payable as the Injured continued in the same job and was later on promoted. It is submitted that the Tribunal has erred in making addition of 100% towards '*future prospects*' and so, it is submitted that the compensation granted by the Tribunal needs to be suitably reduced.

6. On the other hand, learned counsel for Injured refutes the aforesaid stand taken on behalf of Insurer and seeks enhancement by submitting that the quantum of compensation awarded is inadequate. Another ground to seek enhancement is that the salary of the Injured would have been ₹65,000/- per month as on date, but due to the injuries sustained, Injured has been thrown out of the job. Attention of this Court is drawn to evidence of PW-1, i.e., the Employer of Injured, to point out that due to injuries suffered in this accident, the employer has declared that the Injured would not be re-engaged after completion of his tenure. It is submitted by learned counsel for Injured that the compensation granted under the '*non-pecuniary heads*' is on lower side and it needs to be suitably enhanced.

7. Reliance is placed by learned counsel for Injured upon Supreme Court's decision in *Vimal Kanwar & Ors. v. Kishore Dan & Ors.* AIR

2013 SC 3830 to submit that in case like instant one, 100% increase in '*future prospects*' ought to be granted and the Tribunal has erred in taking into consideration the differential of the income of the Injured. Reliance is also placed upon Supreme Court's decision in *Raj Kumar v. Ajay Kumar and Another*, (2011) 1 SCC 343 to submit that the functional disability ought not to be assessed in a mechanical manner.

8. Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that in the face of evidence of Employer of Injured (*PW-1*), it cannot be said that there is no '*loss of future earning*' suffered by the Injured. The Tribunal has made addition of 100% on the differential income, i.e., the income drawn on the day of the accident and the income he would have drawn upon being promoted. On the day of accident, income of Injured was ₹22,209/- per month and Injured was aged 23 years. Recently, Supreme Court in *Anant Son of Sidheshwar Dukre v. Pratap Son of Zhamnnappa Lamzane & Another*, 2018 (10) SCALE 130 while dealing with the case of an injured, has not made any addition towards '*future prospects*'. Reliance placed upon Supreme Court's decision in *Vimal Kanwar (supra)* is of no avail as the said decision was rendered in a case of fatal accident, whereas the instant case is of injury.

9. During the course of hearing, it was brought to the notice of this Court that due to the injuries suffered by the Injured in this accident, he was not re-engaged. So, in the facts and circumstances of this case, it is deemed appropriate to assess the functional disability of the Injured at 40%. The multiplier of 18 adopted by the Tribunal is appropriate. Accordingly, the '*loss of earning capacity*' is reassessed as under: -

$$\text{₹}22,209/- \times 12 \times 40/100 \times 18 = \text{₹}19,18,857.60/-,$$

rounded off to ₹19,18,858/-

10. So far as compensation granted under the '*non-pecuniary heads*' is concerned, I find that the compensation of ₹50,000/- granted under the head of '*pain and suffering*' is wholly inadequate. In the facts and circumstances of this case, compensation of ₹3 lacs under the head of '*pain and suffering*' is granted. Compensation of ₹75,000/- granted by the Tribunal under the head of '*loss of enjoyment of life and disfigurement*' is pathetically low. It is also enhanced to ₹3 lacs. Composite compensation of ₹40,000/- granted by the Tribunal under the head of '*Travelling expenses, Special Diet and other miscellaneous expenses*' appears to be just and reasonable.

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

Loss of earning capacity	₹19,18,858/-
Travelling expenses, Special Diet and other miscellaneous expenses	₹ 40,000/-
Pain and sufferings	₹ 3,00,000/-
Damages as to enjoyment of life and disfigurement	₹ 3,00,000/-
Total	₹ 25,58,858/-

12. Consequentially, the compensation amount payable to the Injured stands reduced from ₹26,70,600/- to ₹25,58,858/-. The modified compensation be released forthwith as per this judgment in the manner as already indicated in the impugned Award. Statutory deposit alongwith excess amount, if any, be refunded to Insurer.

13. While modifying the impugned Award in the aforesaid terms, the above captioned appeals are disposed of.

(SUNIL GAUR)
JUDGE

SEPTEMBER 11, 2018

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