

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: July 12, 2018
+ MAC.APP. 214/2017 & C.M.No. 9057/2017

NATIONAL INSURANCE CO LTD. Appellant
Through: Ms. Manu Shahalia, Advocate

Versus

ALKA SHARMA & ORS. Respondents
Through: Respondent No.1 in person

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 2nd March, 2016 grants compensation of ₹14,29,561/- with interest @ 9% per annum to respondent-injured-Alka Sharma, aged 50 years, on account of grievous injury suffered by her in a vehicular accident, which took place on 12th September, 2014. The facts as noticed in the impugned Award are as under:-

“Brief facts of the case are that on 12.9.2014 the petitioner was going from Supreme Court to Delhi High Court and at about 4:00 PM when she reached in front of India Gate, Shershah Suri Marg, New Delhi, in the meantime one Alto car bearing no. UP 21 AU 2310 being driven in rash and negligent manner by R-1, came from wrong side and hit the car of the petitioner with great force as a result of which she suffered severe crushed injuries on her right hand. The petitioner was taken to RML hospital.”

2. To render the impugned Award, learned Motor Accident Claims Tribunal (*hereinafter referred to as the “Tribunal”*) has relied upon evidence of injured- Alka Sharma; Discharge Summary of Sir Ganga

Ram Hosptial (*Ex. PW2/2*) and Disability Certificate (*EX. PW1/1*), which indicates 77% permanent physical disability in relation to right upper limb. On the strength of evidence recorded, impugned Award of 2nd March, 2016 has been rendered.

3. Vide order of 8th October, 2016, the Tribunal has modified the impugned Award and has granted compensation of ₹32,09,400/- towards “*future loss of income*” to the injured. Thereafter, again vide order of 21st December, 2016, the compensation under this head has been further modified and reduced to ₹27,81,480/- as while passing the impugned Award, the age of injured was inadvertently taken to be 36 years, whereas she was 50 years on the date of accident.

Thus, the breakup of compensation awarded by Tribunal to the injured is as under:-

1.	Medicines and treatment	₹3,52,391/-
2.	Loss of income	₹2,97,170/-
3.	Loss of income on account of disability / amenities of life	₹2,00,000/-
4.	Pain & Suffering	₹3,00,000/-
5.	Conveyance and Special diet	₹80,000/-
6.	Attendant charges	₹50,000/-
7.	Marriage prospects	₹50,000/-
8.	Disfigurement of body	₹1,00,000/-
9.	Future loss of income	₹27,81,480/-
	Total	₹42,11,041/-

4. Learned counsel for Insurer assails impugned Award on the ground that income of the injured has been taken into consideration to assess the “*loss of income*”, whereas her net income ought to have been considered. It is next submitted that the functional disability of 30% assessed by the Tribunal is on the higher side and infact, the functional disability ought to be 10%. So, it is submitted that the awarded compensation deserves to be reduced.

5. On the contrary, the injured who is lawyer by profession has choosen to argue in person and she supports the impugned Award and maintains that the compensation granted is just and proper and no case for reduction is made out. Attention of this Court has been drawn to Medical Board’s Report (*Ex. PW1/1*) to point out that right hand of injured is dysfunctional with loss of all functions, except hook grasp. It is submitted by the injured that the income has been rightly taken by the Tribunal in view of Income Tax Return placed on record. So, it is submitted that no case for reduction of compensation granted by the Tribunal is made out and hence, this appeal deserves dismissal.

6. Upon hearing and on perusal of impugned Award and the evidence on record, I find that the Income Tax Return of the year 2014-15 reveals that the gross income of the injured is ₹7,13,206/- and the tax deduction is of ₹56,963/-. Meaning thereby, that the “*net income*” of injured is:-

$$\text{₹7,13,206/- minus ₹56,963/-} = \text{₹6,56,243/-}$$

7. As regards “*functional disability*” is concerned, I find that the Tribunal has assessed it on the lower side. A Coordinate Bench of this Court in *Arvind Pathak Vs. Parshant Kumar & Ors.* 2016 SCC OnLine Del 2675 has assessed the “*functional disability*” to be 70% in a case

where the permanent disability of the right hand was assessed to be 69% by the Medical Board of Safdarjung Hospital, New Delhi. In the face of afore referred evidence on record, the “*future loss of income*” due to disability suffered by injured is reassessed as under:-

$$\text{₹}6,56,243/- \times 13 \times 70/100 = \text{₹}59,71,811.30$$

(rounded off to ₹59,71,811/-)

8. Since no cross-objections have been filed, therefore, “*future loss of income*”, as determined by the Tribunal is maintained. Compensation granted under the other heads is also found to be reasonable.

9. In view of above, this Court finds that the compensation granted to respondent-injured is justified and no case for reduction of compensation awarded is made out. This appeal and pending application are accordingly dismissed. Registry is directed to forthwith release the amount of compensation to respondent-injured in terms of impugned Award. Statutory deposit, if any, be refunded to appellant.

(SUNIL GAUR)
JUDGE

JULY 12, 2018

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