

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

*Date of Decision: May 24, 2018*

+ **MAC. APP. 728/2014**

MEERA DEVI

..... Appellant

Through: Mr. Rahul Rohtagi, Advocate  
alongwith appellant in person

versus

JOGINDER SINGH & ORS.

..... Respondents

Through: Mr. Pankaj Seth, Advocate

**CORAM:**

**HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT**  
**(ORAL)**

1. Impugned Award of 13<sup>th</sup> March, 2014 grants compensation of ₹4,09,424/- with interest @ 7.5% per annum to appellant on account of her being handicapped due to the injuries sustained in a vehicular accident on 22<sup>nd</sup> March, 2012.

2. The facts as noticed in the impugned Award are as under:-

*“The case of the petitioner is that on 22/03/2012 at about 6.45 p.m. when the injured was going on foot and when she reached at East Metro Station near Uttam Nagar Bus terminal, then a DTC Bus bearing no. DL-1PLC-7239 which was being driven by its driver/respondent No. 1 in rash and negligent manner hit the petitioner. Resultantly, the petitioner sustained grievous injuries. In total, the petitioner have claimed Rs. 40,00,000/- as compensation on*

*account of the injuries sustained by injured in the accident.”*

3. Motor Accident Claims Tribunal (hereinafter to be referred to as ‘the Tribunal’) has relied upon the evidence of Dr. Naresh Chandra who has proved the Disability Certificate, Ex.PW2/A, which reveals that the appellant had suffered 88% permanent physical disability in relation to both the limbs.

4. The functional disability assessed by the Tribunal is 50% in relation to both lower limbs of her entire body. While noting that the injured was aged 60 years on the day of accident, and while assessing her income as a maid servant, on minimum wages and by applying the multiplier of 9, the compensation on account of the disability suffered by appellant, has been assessed at ₹3,59,424/-. The break-up of the compensation granted by the Tribunal is as under :-

|                                                                            |                    |
|----------------------------------------------------------------------------|--------------------|
| Treatment expenses:                                                        | ₹44,340/-          |
| Pain and sufferings:                                                       | ₹30,000/-          |
| Conveyance & special diet:                                                 | ₹20,000/-          |
| Loss of income during treatment period                                     | ₹32,280/-          |
| Compensation on account of disability:                                     | ₹3,59,424/-        |
| Compensation on account of loss of amenities of life and enjoyment of life | ₹50,000/-          |
| <u>Total:</u>                                                              | <u>₹4,09,424/-</u> |

5. In this appeal, appellant seeks enhancement of compensation on the ground that functional disability ought to be taken as 100%. To submit so, appellant's counsel places reliance upon Supreme Court's decision in *Rekha Jain v. National Insurance Co. Ltd. & Ors.* (2013) 8 SCC 389. Learned counsel for appellant submits that appellant has undergone surgical operations thrice and due to the injuries sustained in this accident, she has undergone immense pain and suffering and so, the quantum of compensation under this head needs to be suitably enhanced.

6. Learned counsel for appellant submits that there is un-rebutted evidence of appellant that she was earning ₹10,000/-per month and the Tribunal has erred in assessing her income at minimum wages.

7. It is further submitted by learned counsel for appellant that compensation under the head of '*loss of amenities of life and enjoyment of life*' is wholly inadequate and deserves to be substantially enhanced. It is pointed out by appellant's counsel that the attendant charges have not been granted by the Tribunal, although, appellant in the evidence had claimed ₹30,000/-attendant charges. It is pointed out that the additional evidence has been led in this appeal to show that the cost of artificial limb is ₹5,52,100/-. Reliance is placed upon Supreme Court decision in *Jakir Hussein v. Sabir & Ors.* (2015) 7 SCC 252 to submit that the Court must take care to give full and fair compensation.

8. On the other hand, learned counsel for the respondent-Insurer supports the impugned Award and submits that if cost of artificial

limbs is to be awarded, then the functional disability ought to be scaled down. It is submitted that the compensation granted by the Tribunal under the non-pecuniary heads is just and proper.

9. Upon hearing and on perusal of impugned Award, material on record and the decisions cited, I find that the compensation payable has to be assessed on the facts emerging from record and in light of the precedents cited. Upon doing so, I find that the functional disability suffered by appellant ought to be 70% and not 50% as assessed by the Tribunal. Appellant's evidence regarding her income being ₹10,000/- per month remains un-rebutted. The Tribunal has erred in not considering the income of appellant to be ₹10,000/- per month. There is no basis to assess the income of appellant at minimum wages.

10. In view of the aforesaid, the compensation on account of '*loss of future income due to disability*' due to the injuries suffered by appellant is re-assessed as under :-

$$₹ 10,000 \times 12 \times 9 \times 70/100 = ₹ 6,30,000/-$$

11. The compensation granted under the head of '*loss of amenities of life and enjoyment of life*' is found to be on lower side and accordingly it is enhanced from ₹50,000/- to ₹ 1,00,000/-. The compensation under the head of '*pain and suffering*' also needs to be enhanced. Accordingly, it is enhanced from ₹30,000/- to ₹1,00,000/-. The compensation under the other heads is found to be fair and reasonable. The attendant charges of ₹30,000/- as claimed are granted.

12. So far as the cost of artificial limb is concerned, this Court finds that the compensation on account of the disability suffered is not

required to be reduced as artificial limb cannot be a substitute for natural limb. The estimate of ₹5,52,100/- of artificial limb provided by way of additional affidavit is found to be on higher side. Supreme Court in *Lal Singh Marabi v. National Insurance Co. Ltd. & Ors.* (2017) 5 SCC 82 has granted compensation of ₹ 1 lac towards the cost of artificial limb which is found to be fair and reasonable as there are charitable institutions also which provide for artificial limbs at nominal cost.

13. Resultantly, the compensation payable to appellant is re-assessed as under : -

|                                               |               |
|-----------------------------------------------|---------------|
| Treatment Expenses                            | ₹ 44,340/-    |
| Pain and Suffering                            | ₹ 1,00,000/-  |
| Conveyance & Special diet                     | ₹ 20,000/-    |
| Loss of income during treatment period        | ₹ 32,280/-    |
| Compensation on account of disability         | ₹ 6,30,000/-  |
| Loss of amenities of life & enjoyment of life | ₹ 1,00,000/-  |
| Attendant charges                             | ₹ 30,000/-    |
| Cost of artificial limb                       | ₹ 1,00,000/-  |
| Total                                         | ₹ 10,56,620/- |

14. Consequentially, total compensation granted to injured is enhanced from ₹4,09,424/- to ₹10,56,620/- (*rounded off to ₹10,56,700/-*). The re-assessed compensation shall carry interest @ 9% per annum. The manner and mode of disbursal shall be the same as indicated in the impugned Award. The respondent-Insurer is

granted eight weeks to deposit the enhanced compensation with the Tribunal, which shall be disbursed forthwith to appellant by the Tribunal.

15. With the aforesaid directions, this appeal stands disposed of.

**(SUNIL GAUR)**  
**JUDGE**

**MAY 24, 2018**

p

