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

Date of Decision: May 16, 2018

\+   **<u>MAC.APP. 226/2015 & CM 3865/2015</u>**

ORIENTAL INSURANCE COMPANY LTD ..... Appellant

Through: Mr. Saurabh Kumar Tuteja, Advocate

Versus

SANGITA JAIN AND ORS .....Respondents

Through: Through: Mr. R K Bachchan, Advocate for respondent No.1-Claimant

\+   **<u>MAC.APP. 732/2016</u>**

SANGITA JAIN ..... Appellant

Through: Through: Mr. R K Bachchan, Advocate

Versus

BRIJ PAL & ORS (ORIENTAL INSURANCE CO LTD) .....Respondents

Through: Mr. Saurabh Kumar Tuteja, Advocate for respondent-Insurer

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

<u>JUDGMENT</u>
(ORAL)

1. With consent of learned counsel for the parties, the above captioned two appeals have been heard together and are being disposed of by this common judgment.

2. The above-captioned first appeal is by the Insurer, who seeks reduction in the quantum of compensation, and in the above-captioned second appeal, the Injured seeks enhancement of compensation.

3. Impugned Award of 13th January, 2015 grants compensation of ₹14,05,686/- with interest @ 9% per annum to the Claimant-Injured on account of serious injuries sustained by Smt. Sangeeta Jain aged 36 years in the vehicular accident on 1st March, 2012. The facts as culled out from the impugned Award are as under :-

> *"The brief facts of the case are that on 01.03.2012 at about 05.30 p.m., petitioner, who was standing on a road side near Geeta Colony flyover with her son Shubham Jain, was hit by a motorcycle bearing registration No. DL-5ST-0352, driven by respondent no. 1 at a very high speed in a rash and negligent manner. As a result, petitioner fell down and sustained serious injuries and was taken to GTB Hospital; that a case FIR No. 70/12, u/sec. 279/337 IPC was registered at P.S Geeta Colony against respondent no.1."*

4. The Motor Accident Claims Tribunal (hereinafter to be referred to as 'the Tribunal') has relied upon the evidence of Injured *(PW-1)* and on the evidence of Dr. Suraj Bansal *(PW-2)* who has proved the *Disability Certificate (Ex. PW-2/A)* of Smt. Sangeeta Jain and has rendered the impugned Award while taking the functional disability of Smt. Sangeeta Jain as 60% whereas the permanent disability suffered by her, as per the *Disability Certificate* is 87%. '*Loss of future income'* has been assessed by the Tribunal while taking the income of the Injured on minimum wages of an unskilled workman and after making addition of 50% towards '*future prospects'* and by applying the multiplier of 15. Accordingly, '*loss of future income'* assessed by the Tribunal is ₹10,78,272/-. The break-up of the compensation awarded by the Tribunal is as under :

1	*Towards future loss of income*	*Rs. 10,78,272.00*

2	*Towards pain and sufferings*	*Rs. 80,000.00*
3	*Towards servant/attendant for 6 months*	*Rs. 10,000.00*
4	*Towards conveyance and special diet*	*₹20,000.00*
5	*Towards medical bills*	*₹37,478.00*
6	*Towards loss of amenities & enjoyment of life*	*₹50,000.00*
7	*Towards disfigurement*	*₹50,000.00*
8	*Towards Future loss of Medical Expenses*	*₹40,000.00*
9	*Towards loss of Wages*	*₹39,936.00*
	Total	***₹14,05,686.00***

5. Learned counsel for insurer submits that in view of recent decision of Supreme Court in *National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.,* (2017) 16 SCC 680*,* addition of 40% towards '*future prospects'* ought to be made, whereas the Tribunal has added 50%. So, it is submitted that the compensation granted by the Tribunal needs to be suitably reduced.

6. On the contrary, learned counsel for the Injured submits that the quantum of compensation granted by the Tribunal is inadequate and it ought to be suitably enhanced. It is pointed out by learned counsel for the Injured that the Injured – *Smt. Sangeeta Jain* was earning her livelihood by doing the work of stitching of clothes and so, the minimum wages of a skilled worker ought to be the basis to assess the *'loss of future income'.*

7. It is submitted by learned counsel for the Injured that the functional disability ought to be taken to be 100% as the Tribunal has evaluated the status of the Injured by noting that she is unable to respond properly due to impairment and she takes time to respond. It is pointed out that in

paragraph No. 18 of the impugned Award the Tribunal has noted that the Injured has pain in her lower limb and is unable to squat. So, it is submitted that the quantum of compensation granted needs to be enhanced while taking the functional disability of the Injured to be 100%.

8. Reliance is placed by learned counsel for the Injured upon Supreme Court's decision in *Rekha Jain v. National Insurance Co. Ltd.& Ors.,* AIR 2013 SC 3429, to submit that the Injured who had suffered disability to the extent of 30% has been awarded compensation of ₹9 lacs under the head of '*loss of amenities and enjoyment of life',* and so, the compensation under the head of '*loss of amenities and enjoyment of life',* needs to be enhanced from ₹50,000/- to ₹2 lacs in light of Supreme Court decision in *Rekha Jain* (supra). It is pointed by learned counsel for the Injured that the attendant charges of ₹10,000/- only for a period of six months is wholly inadequate and it needs to be suitably enhanced. Enhancement of compensation under the heads of '*disfigurement and towards future medical expenses'* is also sought. Thus, it is submitted that the quantum of compensation granted by the Tribunal ought to be substantially enhanced.

9. Upon hearing and on perusal of impugned Award, evidence on record and the decisions cited, I find that in view of Supreme Court's decision in *Pranay Sethi* (supra), addition towards *'future prospects'* has to be 40% and not 50% as awarded by the Tribunal. Since there is no tangible proof regarding qualification or income of Injured, therefore, I find that the Tribunal has rightly assessed the income of Injured on minimum wages of an unskilled worker.

10. Regarding assessment of functional disability, I find that the Tribunal has undertaken personal evaluation of Injured and while taking note of her memory impairment, the nature of injuries suffered by her and her *Disability Certificate (Ex. PW-2/A)*, the functional disability has been rightly assessed to be 60%. In the considered opinion of this Court, the functional disability of Injured cannot be considered to be 100%, as Injured in her evidence has claimed that she is unable to walk properly after the accident in question and the vision of her eyes has been also reduced and that she cannot speak properly.

11. In case of permanent disability, the basic principles for awarding of compensation, as reiterated by Supreme Court in *Sanjay Kumar v. Ashok Kumar and Another,* (2014) 5 SCC 330, have to be kept in mind and in light of the ground realities, absence of documentary evidence by itself would not justify reduction in the quantum of compensation. However, to seek enhancement of compensation, tangible evidence is required. Reliance placed upon Supreme Court's decision in *Rekha Jain* (supra) has to be considered in the context in which the said decision has been rendered. Upon doing so, I find that it was a case of a TV actor and in the said decision, the quantum of compensation granted under various heads was found to be deficient and thus was suitably enhanced. Instant case is of a housewife and is thus not comparable with the case of *Rekha Jain* (supra).

12. While taking into consideration the nature of injuries sustained by Injured, I find that the compensation of ₹80,000/- granted to her under the head of *'pain and suffering'* by the Tribunal needs to be enhanced to ₹1

lac. Similarly, the *'attendant charges'* of ₹10,000/- for six months granted by the Tribunal also needs to be enhanced to ₹50,000/-. In light of the evidence of Injured, I find that the compensation of ₹50,000/- granted on account of *'disfigurement'* to her by the Tribunal is reasonable. However, the compensation of ₹50,000/- granted to Injured under the head of *'loss of amenities and enjoyment of life'* is inadequate and is accordingly enhanced to ₹1 lac. In the face of evidence of Injured, I find that the compensation of ₹40,000/- granted to her under the head of *'future medical expenses'* by the Tribunal is inadequate and as such, it is enhanced to ₹1 lac. However, the compensation granted to Injured by the Tribunal under other heads is found to be adequate.

13. In light of the aforesaid, while taking the income of Injured to be ₹6,656/- per month and upon adding 40% towards *'future prospects'* and by applying multiplier of 15, *'future loss of income'* is re-assessed as under:-

₹9,318/- (₹6,656/-+₹2,662/-) x 12 x 15 x 0.60= ₹10,06,344/-

14. The total compensation payable to Injured is re-calculated as under: -

1	*Towards future loss of income*	*₹10,06,344.00*
2	*Towards pain and sufferings*	*₹1,00,000.00*
3	*Towards servant/attendant for 6 months*	*₹50,000.00*
4	*Towards conveyance and special diet*	*₹20,000.00*
5	*Towards medical bills*	*₹37,478.00*
6	*Towards loss of amenities & enjoyment of life*	*₹1,00,000.00*
7	*Towards disfigurement*	*₹50,000.00*
8	*Towards Future loss of Medical Expenses*	*₹1,00,000.00*

9	*Towards loss of Wages*	*Rs. 39,936.00*
	Total	***Rs.15,03,758.00***

15. Consequentially, compensation of ₹14,05,686/- granted by the Tribunal is enhanced to ₹15,03,758/- and it shall carry interest @ 9% *per annum.* The Insurer shall deposit the compensation as per this judgment within a period of six weeks from today. Thereafter, the reassessed compensation of ₹15,03,758/-, alongwith interest accrued thereon, be released forthwith to Injured in the manner and ratio as indicated in impugned Award. Statutory deposit be refunded to Insurer as per Rules.

16. The above-captioned two appeals and the pending application are disposed of in the aforesaid terms.

(SUNIL GAUR)
JUDGE

MAY 16, 2018
p/s