* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: August 07, 2018

\+ **MAC.APP. 971/2016**

NAVDEEP SINGH ..... Appellant

Through: Mr. Varun Sarin and Mr. Shailendra Singh, Advocates

Versus

LAKHVINDER SINGH & ORS. (M/S NATIONAL INSURANCE CO LTD) ..... Respondents

Through: Mr. Pankaj Seth, Advocate for Insurer

\+ **MAC.APP. 1077/2016**

NATIONAL INSURANCE CO LTD. ..... Appellant

Through: Mr. Pankaj Seth, Advocate

Versus

NAVDEEP SINGH AND ORS. ..... Respondents

Through: Mr. Varun Sarin and Mr. Shailendra Singh, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 25th July, 2016 grants compensation of ₹65,20,000/- with interest @ 9% per annum to injured- *Navdeep Singh,* aged 19 years, on account of grievous injuries sustained by him in a vehicular accident, which took place on 13th August, 2010.

2. In the above captioned first appeal, Injured seeks enhancement in quantum of compensation awarded, whereas in the above captioned second appeal, Insurer seeks reduction in the quantum of compensation awarded by the Tribunal. Since both the appeals arise out of common impugned Award, 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 of the case are that on 13.08.2010 at about 04:15 pm, injured Navdeep Singh was coming from Nanakmata to his native village by motorcycle i.e. Unicon Honda bearing number U.K.-06-P-9868. When he reached at Chika Ghat suddenly offending vehicle i.e. TATA Security Van Axix Bank Sitarganj bearing number U.K.-04-CA-1482 being driven by respondent no.1 in a rash and negligent manner and was coming from opposite side and hit the injured due to the forceful impact, he fell down on the road and sustained injury on all over his body. Later on he was shifted to Barailey Hospital."*

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 of 15th September, 2014, the

injured had suffered permanent disability of 100% with respect to his whole body. On the strength of evidence recorded, impugned Award has been rendered. The breakup of compensation awarded to Injured by Tribunal is as under:-

Loss for medical expenses	₹50,00,000/-
Compensation for pain and suffering	₹50,000/-
Compensation for special diet and conveyance	₹1,50,000/-
Loss of future earning capacity/future income	₹5,00,000/-
Compensation for loss of amenities and enjoyment of life	₹1,00,000/-
Attendant charges	₹5,00,000/-
Compensation for disfigurement	₹20,000/-
Loss of income during treatment	₹2,00,000/-
Total	₹65,20,000/-

5. Learned counsel for Injured seeks enhancement in the quantum of compensation awarded on the ground that the potential income of injured has not been taken into consideration. Injured's counsel submits that Injured was a student of first year of B.Com and had a bright future and had potential to earn ₹20,000/- p.m. Counsel for Injured relies upon a decision of Coordinate Bench of this Court in *United India Insurance Co. Ltd. Vs. Kalpana Mishra & Ors.* 2012 IX AD (Delhi) 407 to point out that addition towards *"future prospects"* ought to have been made and instead of lump-sum compensation under the head of *"loss of future*

income", the Tribunal ought to have assessed it by applying appropriate multiplier.

6. Attention of this Court has been also drawn to additional evidence of father of Injured- *Balwinder Singh (AW-1)*; *Simran Joshan (AW-2),* sister of the Injured; Dr. Virender *(AW-3)* and Attendant *Sonu Singh (AW-4)*. It is pointed out that father of Injured *(AW-1)* has proved on record the Mark-Sheet of the Injured, regarding his passing B.Com first year. He has also deposed in respect of estimate for electronic bed, special mattress for that bed and electric wheel chair. It is further pointed out that Sister *(AW-2)* of Injured has deposed in respect of photographs *(Ex.AW-1/9 colly)* to indicate present medical condition of Injured. It is also pointed out that Dr. Virender *(AW-3)* has proved on record a Certificate *(Ex.AW3/A)* regarding future medical treatment required by the Injured. It is urged that Sonu Singh *(AW-4),* who is the Attendant of Injured, has deposed that he has been engaged by the family of Injured at ₹30,000/- per month to take care of Injured and to give him physiotherapy. On the strength of afore-referred additional evidence on record, enhancement of compensation is sought by Counsel for Injured.

7. On the contrary, counsel for Insurer challenges the impugned Award on the ground that the Tribunal has erred in not holding that the accident in question took place due to contributory negligence of the Injured, who was driving his vehicle rashly and negligently. On the quantum of compensation aspect, it is submitted by counsel for Insurer that compensation awarded to the Injured is exorbitant and it needs to be

suitably reduced. It is urged that Disability Certificate of 15th September, 2014, medical bills etc. are not duly proved on record and so, no case is made out to enhance the compensation on the basis of additional evidence led. Nothing else is urged by either side.

8. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that the instant case is not of contributory negligence. Apparently, negligence is of the driver of the insured vehicle in question. On the quantum aspect, I find that the Disability Certificate of 15th September, 2014 has come on record under the orders of the Court and so, it has been rightly relied upon by the Tribunal. The evidence of father of the Injured *(AW-1)* regarding the medical bills is unassailable. In the face of medical bills on record, the Tribunal was justified in granting medical expenses of ₹50,00,000/-. By way of additional evidence, father *(AW-1)* of the Injured, has placed on record medical bills *(Ex.AW1/3 colly)* of ₹2,55,320/- regarding medical expenses incurred by the Injured during pendency of this appeal. This Court finds that in addition to the medical expenses already incurred, Injured is also entitled to additional medical expenses of ₹2,55,320/-, which he had incurred during the pendency of this appeal.

9. On the day of the accident, the Injured was first year student of B.Com. According to his marks-sheet, he was an average student and was aged about 19 years. Under the head of *"loss of future earning capacity/ future income"* the Tribunal has granted lump-sum amount of ₹5,00,000/- which is inadequate. The minimum wages of a Graduate in the year 2010

were ₹7,020/-. While dealing with a similar case of 100% permanent disability, Supreme Court in *V.Mekala Vs. M. Malathi & Anr.* 2014 (5) SCALE 772 has assessed notional income of a student as ₹10,000/-. In view thereof, it is deemed appropriate to assess the income of the Injured at ₹10,000/- p.m. Hence, the *"loss of future earning capacity"* of Injured is reassessed as under:-

₹10,000/- X 12 X 18 X 140/100 = ₹30,24,000/-

10. The Tribunal has erred in granting compensation of ₹2,00,000/- under the head *"loss of income during treatment"* because the Injured was still a student on the day of accident. Hence, the compensation granted under this head is disallowed.

11. The compensation granted by the Tribunal under the *non-pecuniary* heads, appears to be on the lower side and is required to be suitably enhanced in light of additional evidence led by the Injured. The Tribunal has granted compensation of ₹5,00,000/- under the head *"attendant charges"*. In the face of additional evidence of *Sonu Singh (AW-4)* on record, *"attendant charges"* which includes physiotherapy as well, is re-assessed at ₹30,000/- p.m. Considering the medical condition of the Injured, it can be said without hesitation that the Injured requires an Attendant for his day to day survival. So, *"attendant charges"* already incurred are enhanced from ₹5,00,000/- to ₹14,00,000/-.

12. The compensation of ₹1,50,000/- granted by the Tribunal under the head *"special diet and conveyance"* is found to be reasonable and is hence maintained. So far as compensation under the head *"pain and*

sufferings" is concerned, considering the nature of injuries suffered by the Injured, I find it to be wholly inadequate. So, the compensation awarded to Injured under the head *"pain and sufferings"* is enhanced from ₹50,000/- to ₹3,00,000/-. This Court finds that the compensation of ₹1,00,000/- awarded to Injured under the head *"loss of amenities and enjoyment of life"* is meager. In the light of decision of this Court in *National Insurance Co. Ltd. Vs. Menka Lidhoo & Ors.* 2017 SCC OnLine Del 7658, it is accordingly enhanced from ₹1,00,000/- to ₹3,50,000/-. The compensation of ₹20,000/- granted by the Tribunal under the head *"disfigurement"* is pathetically low. Hence, compensation under the head *"disfigurement"* is appropriately increased from ₹20,000/- to ₹2,00,000/-.

13. In the light of additional evidence led by the Injured and keeping in view his present medical condition evidenced from his photographs on record, I find that he is entitled to an electronic bed, special mattress and an electronic wheel chair. As per Quotation *(EX. AW1/7)*, the estimated cost of electronic bed, special mattress and an electronic wheel chair is ₹2,39,030/-. It is accordingly directed that Insurer shall ensure that an electronic bed, special mattress and wheel chair is promptly provided to Injured and its cost/ expenses shall be borne by Insurer in terms of Quotation *(Ex. AW1/7)* or at the current market price along with applicable taxes. It is made clear that the cost of these items shall not form part of payable compensation to the Injured but the cost/ expense of purchasing electronic bed, special mattress and electronic wheel chair shall be directly disbursed by Insurer to the supplier of these items.

Needful be done within twelve weeks. In case any repair or replacement charges are incurred in respect of electronic bed, special mattress and electronic wheel chair, the same shall be borne by Insurer upon submission of requisite documents on behalf of Injured. Needless to say the repair/ replacement charges would be directly remitted by the Insurer to the supplier. If present medical condition of Injured necessitates any surgical intervention etc, its costs would be also borne by the Insurer by providing cashless facility.

14. In view of Certificate of 15th November, 2016 *(Ex.AW3/A)*, future medical expenses of the injured are assessed at ₹20,000/- p.m. Judicial notice can be taken of the research literature which clearly indicates that life expectancy in cases of *quadriplegia* significantly reduces. The magnitude of the reduction depends on level and grade. In view thereof, it is deemed appropriate to adopt a course where the Injured is provided good treatment and public money is also not wasted. Taking the life expectancy of Injured to be 50 years, the *"future medical expenses"* are assessed as under:-

₹20,000 X 12 X 23 = ₹55,20,000/-

15. The compensation of ₹55,20,000/- awarded under the head *"future medical expenses"* shall not form part of payable compensation to the Injured and will not be disbursed to him. It be invested into fixed deposit receipt by Insurer in the name of father of Injured in a nationalized bank for a period of six months, with automatic renewal. On production of medical documents/prescriptions and bills, affidavit of *"life certificate"*,

expenses for physiotherapy, if so prescribed by doctor and Receipt for *"attendant charges"* and "*conveyance bills*", out of awarded compensation of ₹55,20,000/-, periodical release on six months basis be made by Insurer to father of Injured, for his future medical treatment and survival.

16. This Court finds that the Injured was unmarried when this accident had taken place and the Tribunal has erred in not granting compensation under the head *"loss of marriage prospects"* to Injured. In the light of evidence on record, the Injured is granted compensation of ₹3,00,000/- under the head *"loss of marriage prospects"*.

17. Accordingly, the compensation granted to Injured is reassessed as under:-

Medical expenses	₹50,00,000/-
Additional medical bills	₹2,55,320/-
Compensation for pain and suffering	₹3,00,000/-
Compensation for special diet and conveyance	₹1,50,000/-
Loss of earning capacity	₹30,24,000/-
Compensation for loss of amenities and enjoyment of life	₹3,50,000/-
Attendant charges	₹14,00,000/-
Compensation for disfigurement	₹2,00,000/-
Loss of marriage prospects	₹3,00,000/-
Total	₹1,09,79,320/-

18. Consequentially, the compensation amount payable to Injured stands enhanced from ₹65,20,000/- to ₹1,09,79,320/-. In addition, the Injured shall also be entitled to compensation of ₹55,20,000/- under the

head *"future medical expenses"*, which shall be periodically disbursed in the manner already indicated above. However, electronic bed, special mattress and electronic wheel chair with estimated cost of ₹2,39,030/- or current market price with applicable taxes be provided by Insurer to Injured in the manner already indicated herein above. The enhanced compensation be deposited by Insurer with the Tribunal within eight weeks from today. The enhanced compensation shall carry interest @ 9% *per annum*. The awarded compensation be disbursed in the manner as indicated in the impugned Award. Statutory deposit, if any, be refunded to Insurer.

19. With aforesaid directions, the above captioned two appeals are disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 07, 2018
r