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

Date of Decision: August 14, 2018

\+   **MAC.APP. 976/2017 & CM 40603/2017**

U P STATE ROAD TRANSPORT CORPORATION ....Appellant
Through: Mr. Shadab Khan, Advocate for Ms. Garima Prashad, Advocate

versus

VIBHOR FIALOK & ANR. .....Respondents
Through: Mr. S.N. Parashar and Ms. Pankaj Kumari, Advocates

\+   **MAC.APP. 585/2018**

VIBHOR FIALOK ..... Appellant
Through: Mr. S.N. Parashar and Ms. Pankaj Kumari, Advocates

versus

KRISHAN DEV & ANR ..... Respondent
Through: Mr. Shadab Khan, Advocate for Ms. Garima Prashad, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 8th June, 2017 grants compensation of ₹4,24,000/- with interest @ 9% per annum to a private employee-*Vibhor,* aged 28 years (hereinafter referred to as Injured) on account of grievous

injuries suffered by him in a vehicular accident, which took place on 4th August, 2014.

2. In the above captioned first appeal, the Owner of Bus in question, seeks reduction in quantum of compensation awarded, on the ground that income of the Injured has been wrongly computed as ₹15,400/- per month, whereas the income of the Injured ought to be assessed on minimum wages. In the above captioned second appeal, enhancement of compensation is sought by the Injured. 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:-

> *"Necessary facts in brief leading to filing the present claim petition are that on August 4, 2014, petitioner was travelling in U.P. roadways bus bearing registration No. UP-11T-6261 from Haridwar to Delhi. The bus was being driven by respondent No. 1 Krishan Dev and the bus belongs to respondent No. 2. It was alleged that respondent No. 1 was driving the bus at high speed in a rash and negligent manner and in zig-zag manner. Though petitioner and other co-passengers asked the driver not to drive the bus in such a manner, yet respondent No. 1 did not give any heed to their request and continued to drive carelessly, rashly or negligently. It was alleged that at about 3 AM, when the bus reached near Khatoli Chowk, Kankad Khera, NH-8 within the jurisdiction of PS Khankad Khera,District Meerut, UP, all of sudden, respondent No. 1 lost his control over the bus and hit in the truck bearing registration No. UP-15-BT-4962 with great force in its back side. Due to accident,*

petitioner sustained grievous injury i.e. open grade III, B/L femur condoyle with fracture SOF with fracture proximal fibula with ciley Pest (RT) side and other multiple injuries. He was taken to Kailash Hospital, Meerut from where he was shifted to E.S.I Hospital Basaidarapur, Ring Road, New Delhi where he remained admitted till October 1, 2014. Thereafter, he took medical treatment as outdoor patient."

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. PW3/A),* the Injured had suffered permanent disability of 48% in relation to right lower limb and the Tribunal has taken Functional Disability of the Injured at 40%. The breakup of compensation awarded by the Tribunal is as under:-

NAME OF HEAD	AMOUNT
Loss of Income (₹15,400/- X 5)	₹77,000/-
Medical Expenses	₹8,250/-
Conveyance Charges	₹7,000/-
Special Diet(1000 X 9)	₹9,000/-
Attendant Charges (75 X 300)	₹22,500/-
Pain, suffering & Mental Shock	₹1,00,000/-
Loss of disfigurement/disability	₹2,00,000/-
Total	₹4,23,750/- (rounded of to ₹4,24,000/-)

5. Learned counsel for the Owner of Bus in question, assails impugned Award on the ground that the computation of the income of the Injured has been incorrectly made by the Tribunal and that the compensation under the *"non pecuniary heads"* is exorbitant and needs to be suitably reduced. It is also submitted by learned counsel for the

owner that the Disability Certificate has not been issued as per the Second Schedule to *Motor Vehicles Act,1988* and as per the criteria adopted under the Workmen Compensation Act. So, it is submitted by learned counsel for the owner of Bus in question that the compensation awarded by the Tribunal needs to be modified.

6. On the contrary, learned counsel for the Injured refutes the aforesaid stand taken on behalf of the owner and submits that the quantum of compensation granted by the Tribunal is inadequate and it needs to be suitably enhanced.

7. It is submitted by counsel for the Injured that the provisions of Second Schedule to the Motor Vehicles Act, 1988 are in relation to no fault liability and fixed compensation is payable under Section 163-A of the Motor Vehicles Act,1988 and this Schedule cannot be applied to the cases under Section 166 of the Motor Vehicles Act,1988. Enhancement of compensation is sought on the ground that the Tribunal has erred in not making any addition towards *"future prospects"* and in not awarding compensation under the head *'loss of future earning capacity'* due to the disability suffered by the Injured in this accident.

8. It is pointed out that as per Income Tax Returns (ITRs) for the year 2013-14, the taxable income of the Injured was ₹2,33,523/- and for the subsequent year it was ₹2,67,870/-, so addition of 40% towards *"future prospects"* is sought by learned counsel for the Injured.

9. It is submitted that the functional disability of the Injured ought to be taken as 48% as he faces difficulty in walking and doing the routine work. It is submitted that the Injured was hospitalized for three months

and so, the compensation under the *"non pecuniary heads"* ought to be suitably enhanced.

10. Upon hearing and on perusal of impugned Award and the evidence on record, I find that reliance placed by learned counsel for the Owner of Bus in question on the Second Schedule to Motor Vehicles Act, 1988 is misplaced as Supreme Court has clarified in its Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.,* (2017) 16 SCC 680 that Second Schedule to Motor Vehicles Act, 1988 is defective. The Tribunal has relied upon the evidence of Injured's employer to assess the income of the Injured at ₹15,400/- per month while ignoring the Income Tax Returns filed by the Injured for the relevant year. The Tribunal has overlooked the evidence of the injured regarding his earning from his business also. In such a situation, the Tribunal ought to have relied upon the evidence of *PW4-Inspector* of the concerned Income Tax Office who has proved the Income Tax Returns of the Injured for the relevant period. In the face of the evidence of aforesaid witness *(PW4)*, the monthly income of the Injured was ₹19,460/- which is made the basis to assess the income of the Injured.

11. The assessment of permanent disability of the Injured is on the basis of the Disability Certificate *(Ex. PW3/A)* which has been duly proved on record by Dr. Lalit *(PW3)* and as per this Disability Certificate, the permanent disability suffered by the Injured is 48% in relation to right lower limb. The evidence of Dr. Lalit *(PW3),* who proved the Disability Certificate *(Ex. PW3/A),* remains unchallenged. In view thereof, there is no basis to reassess the permanent disability of the Injured. However, the Tribunal has assessed the Functional Disability of

the Injured while noting that the injured faces difficulty in walking and doing other routine work. Since the permanent disability of the Injured is in relation to the right lower limb, therefore, the functional disability ought to be assessed at 48% and not less. Considering that the injured was aged 28 years on the day of the accident and was having a fixed income, addition of 40% towards *"future prospects"* is to be made in view of Supreme Court's Constitution Bench decision in *Pranay Sethi (Supra).* In view of Supreme Court's decision in *Sarla Verma (Smt.) & Ors. Vs. Delhi Transport Corporation & Anr.* (2009) 6 SCC 121 the applicable multiplier is of 17. Accordingly, the *"loss of future earning capacity"* is reassessed as under:-

₹19,460/- X 12 X 48/100 X 17 X 140/100= ₹26,67,732/-

12. As regards the compensation granted under the *"non pecuniary heads"*, I find adequate compensation has been already granted by the Tribunal and no case for enhancement of compensation under the *"non pecuniary heads"* is made out. The break-up of compensation payable to Injured is as under:-

Loss of Future Earning Capacity	₹26,67,732/-
Loss of Income during treatment	₹77,000/-
Medical Expenses	₹8,250/-
Conveyance Charges	₹7,000/-
Special Diet	₹9,000/-
Attendant Charges	₹22,500/-
Pain and suffering	₹1,00,000/-
Disfigurement	₹2,00,000/-
Total	₹30,91,482/-

13. Consequentially, the compensation awarded by the Tribunal stands enhanced from ₹4,24,000/- to ₹30,91,482/-. The enhanced compensation be deposited by the owner of Bus in question with Registrar General of this Court within six weeks. The enhanced compensation with interest @ 9% per annum be released to the Injured forthwith in the manner as indicated in the impugned Award. Statutory deposit, if any, be refunded to the Owner of Bus in question.

19. With the aforesaid directions, both the appeals are accordingly disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 14, 2018
v