* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: July 04, 2018

\+ **MAC. APP. 683/2015 & C.M.17382/2015**

UNITED INDIA INS CO LTD .....Appellant
Through: Mr. Vijay Singh, Advocate for Mr. Abhishek Kumar, Advocate

versus

ANKIT KUMAR & ORS. .....Respondents
Through: Mr. Shekhar Aggarwal and Mr. Ishan Kumar, Advocates for respondent

\+ **MAC. APP. 861/2017**

ANKIT KUMAR .....Appellant
Through: Mr. Shekhar Aggarwal and Mr. Ishan Kumar, Advocates

versus

THE UNITED INDIA INSURANCE CO LTD & ORS. .....Respondents
Through: Mr. Vijay Singh, Advocate for Mr. Abhishek Kumar, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. The above-captioned two appeals are directed against impugned Award of 6th July, 2015 vide which *Motor Accident Claims Tribunal, Karkardooma Courts, East District, Delhi (hereinafter referred to as 'the Tribunal')* has awarded compensation of ₹22,98,212/- with interest @ 9% per annum to injured-*Ankit Kumar*, who had sustained grievous injuries in a vehicular accident on 12th March, 2014. The above-captioned first appeal is by the Insurer to seek reduction of the quantum of compensation granted whereas in the above-captioned second appeal, Injured-*Ankit Kumar* seeks enhancement in the quantum of compensation granted by the Tribunal.

2. The factual background of this case, as noticed in the impugned Award, is as under:-

> *"The facts sans unnecessary details are that on 12.03.2014 at about 8.45 pm, the Petitioner was waiting for a bus near Kondli Turn for attending his tuition. Suddenly a DTC Bus bearing no. DL-1PB-5058 (hereinafter referred to as the Offending Vehicle), which was driven by respondent no.1 and coming in a high speed from Noida side knocked him down and ran over his right leg, crushing his right leg bones, leading to below knee amputation. He was taken to Dr. Hedgewar Hospital. A case FIR No.290/14, u/sec.279/338 IPC was registered at Police Station New Ashok Nagar, against respondent No.1."*

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

4. On the basis of evidence led, the Tribunal has granted compensation of ₹22,98,212/- to Injured and its break-up is as under: -

1	*Future Loss of Income*	*Rs.11,20,392.00*
2	*Towards Non pecuniary Heads*	*Rs.3,00,000.00*
3	*Towards servant/attendant charges*	*Rs.30,000.00*
4	*Towards conveyance & special diet*	*Rs.40,000.00*
5	*Towards medical bills*	*Rs.1,57,820.00*
6	*Towards loss of Studies*	*Rs.50,000.00*
7	*Towards Loss of Marriage Prospects*	*Rs.1,00,000.00*
8	*Towards Future medical Expenses*	*Rs.5,00,000.00*
Total =		***Rs.22,98,212.00***

5. The Tribunal has adopted minimum wages of a matriculate to assess the monthly income of Injured by observing as under: -

> *As per Adhar Card of the Petitioner Ex.PW1/A, his age is taken as 18 years. The petitioner was a student. He possessed good health prior to the accident and has suffered loss of studies for a considerable period. For him, the best part of his life was yet to come. The main elements of the compensation in a case like petitioner's are the pain, shock, frustration, deprivation of ordinary pleasure and enjoyment associated with healthy and mobile limbs. Therefore, considering the aforesaid judgments, in my opinion, minimum wages for matriculate workman can be taken into consideration. His monthly income thus, is taken as Rs.10,374/-.*

6. As per the Disability Certificate (Ex.PW2/A), Injured had suffered 82% permanent disability in relation to his right lower limb due to accident in question. The Tribunal has assessed the functional disability to be 50%.

7. Learned counsel for Insurer assails impugned Award while relying upon Supreme Court's decision in *Master Mallikarjun v. Divisional Manager, The National Insurance Company Limited and Anr.,* AIR 2014 SC 736 to submit that in a case of student, compensation under non-pecuniary heads only is to be awarded as a student does not have any income. He further submits that compensation of ₹5 lacs under the head of *'future medical expenses'* is on the higher side as functional prosthesis restoration option is available in market at a relatively lower price than ₹5 lacs. It is next submitted by learned counsel for Insurer that *lump sum* compensation of ₹3 lacs under the non-pecuniary heads has been granted by the Tribunal, but still further compensation under sub-heads of this very head i.e. Non-Pecuniary, also stands granted and so, quantum of compensation granted deserves to be suitably reduced.

8. Learned counsel for Injured submits that the compensation awarded by the Tribunal is inadequate and relies upon decisions of this Court in *IFFCO Tokio General Insurance Co. Ltd., v. Tenzin Peldon & Ors.,* 2017 SCC OnLine Del 10828 and *National Insurance Company Ltd. v. Shweta Sharma & Ors.,* 2017 SCC OnLine Del 12587 and Supreme Court's decision in *V. Mekala v. M. Malathi & Anr.,* (2014) 11 SCC 178 to submit that in a case of student of 17 years, notional income of deceased has been taken to assess *'future prospects'* also. Learned counsel for Injured submits that the prosthetic leg was obtained by Injured at ₹1,87,055/- and it is so evident from the bill *(Ex.PW 3/3)*. It is pointed out that the average lifespan of prosthetic leg is 5 to 6 years and so, the entire cost of artificial limb package ought to be ₹19 lacs odd. It is

submitted by learned counsel for Injured that non-pecuniary heads nowhere include loss of marriage prospects aspect in case of unmarried.

9. Enhancement of compensation is sought by learned counsel for Injured by submitting that the Tribunal has erred in not granting *'future prospects'*. To claim addition towards *'future prospects',* reliance is placed upon Supreme Court's decision in *Tenzin Peldon (supra)*. So, it is submitted that the compensation granted by the Tribunal needs to be suitably enhanced.

10. Upon hearing and on perusal of impugned Award and the evidence on record, I find that in none of the decisions relied upon by learned counsel for Injured, Supreme Court's decision in *Master Mallikarjun (supra)* has been considered. In a case of student, a Co-Ordinate Bench of this Court in *Oriental Insurance Company Ltd. v. Master Arun & Ors.,* 2016 SCC OnLine Del 2422, while relying upon Supreme Court's decision in *Master Mallikarjun (supra),* has awarded *lump sum* compensation of ₹4 lacs on account of 56% permanent disability and has also granted compensation of ₹1 lac towards *'pain and suffering'* and compensation of ₹50,000/- under the head of *'loss of marriage prospects'*.

11. In the instant case, Injured was aged 17 years on the day of the accident and his functional disability has been rightly assessed to be 50%. In view of Supreme Court's decision in *Master Mallikarjun (supra)*, compensation under the head of *'future loss of income'* is disallowed and *lump sum* compensation of ₹4 lacs is granted to Injured on account of permanent disability suffered by him. Since the Tribunal has already

awarded *lump sum* compensation of ₹3 lacs under the Non-Pecuniary Heads, while relying upon the decision in *Oriental Insurance Co. Ltd. v. V.S. Vijay Mittal*, (2008) ACJ 1300, therefore, separate compensation under the head of *'loss of marriage prospects'* is disallowed. In view of Supreme Court's decision in *Master Mallikarjun (supra)*, no addition towards *'future prospects'* can be made as a student does not have any income. No separate compensation under the head of *'loss of studies'* is justified and hence, it is disallowed. However, amount of *'medical bills'* and *'attendant charges'* granted by the Tribunal is maintained.

12. Towards *'future medical expenses'*, the Tribunal has granted *lump sum* compensation of ₹5 lacs while ignoring the evidence of injured regarding obtaining of prosthetic limb at the cost of ₹1,87,055/- against the bills (Ex.PW 3/3). Authorized Representative of *M/s.Otto Bock HealthCare India Pvt. Ltd.* has deposed that the total estimated cost of entire prosthesis package would be ₹19,15,200/- and this estimate has been arrived at after examining the Injured. It has come in the evidence of this witness (PW-3) that the average life of prosthetic leg is 5 to 6 years. Upon scrutiny of the evidence of this witness (PW-3), I find that there is no worthwhile cross-examination of this witness regarding prosthetic limb being available in market at an amount lesser than ₹19 lacs. In the face of evidence of PW-3, it becomes evident that the fitment of artificial leg obtained by Injured at the cost of ₹1,87,055/- would have the life of 5 to 6 years.

13. While taking the life expectancy at 66 years, the requirement of Prosthetic Cost Assessment for Transtibial Amputee till life expectancy

of 66 years has been proved on record as Ex.PW3/A by *Sh. Anshul Sengar, Prosthetist and Orthotist (PW-3)*. There is no challenge to this exhibit which reveals that the periodical replacement of the prosthetic limb would cost ₹19,15,200/-. In the face of afore-referred positive evidence, the Tribunal was not justified in awarding *lump sum* compensation of ₹5 lacs only towards *'future medical expenses'*. While relying upon the cost assessment (Ex.PW3/A), future medical expenses of ₹19,15,200/- is granted. Consequentially, the compensation payable to Injured as reassessed as under: -

1	Loss due to permanent disability	₹4,00,000/-
2	Towards Non pecuniary Heads	₹3,00,000/-
3	Towards servant/attendant charges	₹30,000/-
4	Towards conveyance & special diet	₹40,000/-
5	Towards medical bills	₹1,57,820/-
6	Towards Future medical Expenses	₹19,15,200/-
	Total	**₹28,43,020/-**

14. Consequentially, the compensation amount payable stands enhanced from ₹22,98,212/- to ₹28,43,020/-. The enhanced compensation be deposited by Insurer with the Tribunal within four weeks from today. The re-assessed compensation shall carry interest @ 9% *per annum* and it be disbursed in the ratio and manner as indicated in the impugned Award with the rider that the *'future medical expenses'* granted by this Court

shall be retained in Fixed Deposit, except for the bill amount (Ex.PW3/3), and disbursed directly to the hospital/agency from where artificial limb is sought to be replaced. Statutory deposit, if any, be refunded to Insurer.

15. In aforesaid terms, these appeals and the application are disposed of.

(SUNIL GAUR)
JUDGE

JULY 04, 2018
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