

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

Date of Decision: May 14, 2018

+ **MAC.APP. 707/2015 & CMs 19286/15, 41408/16**

NEW INDIA ASSURANCE CO LTD Appellant
Through: Mr. Pankaj Singh Thakur,
Advocate

versus

MUKESH KUMAR & ORS Respondents
Through: Nemo

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 29th July, 2015 grants compensation of ₹13,73,707/- to first respondent on account of grievous injuries sustained by him in a vehicular accident on 28th August, 2011. The break-up of the compensation granted by the Motor Accident Claims Tribunal (SE-01), Saket Courts, New Delhi (*hereinafter referred to as 'the Tribunal'*) is as under:-

<i>Head of compensation</i>	<i>Amount (in Rs.)</i>
<i>Loss of income during treatment</i>	38,532/-
<i>Loss of Future Income</i>	5,89,560/-
<i>Pain and suffering</i>	1,50,000/-
<i>Special Diet</i>	25,000/-
<i>Conveyance</i>	25,000/-
<i>Attendant charges</i>	25,000/-
<i>Loss of amenities of life</i>	50,000/-

<i>Medical Expenses</i>	<i>4,70,615/-</i>
<i>Total</i>	<i>13,73,707/-</i>

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

“The facts, in brief, as mentioned in the petition are that on 28.08.2011, the petitioner was coming from Gram Nangla Tatar, PS Hathras Junction, Distt. Mahamaya Nagar, UP, to Delhi, along with his relative Sh. Umesh, on a motorcycle bearing no. DL-8SAU-5724. It is stated that while they reached near Gram Nangla Tatar, PS Hathras Junction, he was hit by one Scorpio bearing registration no. DL-8CJ-7035, which was being driven by respondent no. 1 in a rash and negligent manner, due to which, petitioner received multiple grievous injuries all over his body. It is stated that petitioner was removed to Orthonova Hospital, Hauz Khas, New Delhi. It is stated that the accident occurred due to the rash and negligent driving of the respondent no. 1. It is stated that the petitioner sustained grievous injuries in the said accident. Petitioner has sought a claim of Rs. 45 lakhs as compensation.”

3. The Tribunal has relied upon evidence of first respondent and his Attendant-Amit Kumar (PW-2) and on its basis, has rendered the impugned Award. It is evident from order of 26th May, 2017 that first respondent was duly represented. However, thereafter, there is no representation on behalf of respondents despite service.

4. The challenge to impugned Award by learned counsel for appellant-Insurer is on the ground that first respondent was aged 27 years on the day of the accident and his income has been assessed by the Tribunal on minimum wages payable to an unskilled person and so, addition towards ‘future prospects’ ought to have been 40% and not 50%.

5. Learned counsel for appellant-Insurer submits that the permanent disability suffered by first respondent has been assessed to be 40% and the Tribunal has erred in assessing the functional disability at 30%, whereas it ought to have been 20%. It is pointed out by appellant's counsel that first respondent was running a Grocery shop at his village in *Sehat Pur, Faridabad, Haryana* and so, the functional disability assessed by the Tribunal at 30% is on higher side. Lastly, it is submitted by learned counsel for appellant-Insurer that compensation of ₹1.5 lacs granted by the Tribunal under the head of '*pain and suffering*' to first respondent is also on higher side. Thus, it is submitted that compensation awarded by the Tribunal needs to be suitably reduced.

6. Upon hearing and on perusal of impugned Award and the evidence on record, I find that permanent disability suffered by first respondent has been assessed by the Tribunal to be 40%. The medical record of first respondent reveals that he had sustained a non-healing ulcer on his right leg and had suffered Grade-III compound fracture on both the bones of his right leg and was also advised follow-up treatment. In the facts and circumstances of this case, I find that the Tribunal has rightly assessed the functional disability to be 30%. However, I find that in view of Supreme Court's Constitution Bench decision in *National Insurance Co. Ltd. Vs. Pranay Sethi & Ors.* (2017) 16 SCC 680, addition towards '*future prospects*' has to be 40% and not 50%. It is ordered accordingly.

7. While taking income of first respondent at ₹6,422/- per month and by adding 40% towards '*future prospects*' (i.e. ₹2,569/-) and by applying multiplier of 17 while taking the functional disability to be 30%, compensation granted by the Tribunal under the head of '*loss of future*'

income’ is reassessed at ₹5,50,249/-. So far as compensation granted by the Tribunal under the head of ‘*pain and suffering*’ is concerned, I find it to be justified in light of the injuries sustained by first respondent. As such, compensation payable to first respondent is reassessed as under:-

Head of compensation	Amount (in Rs.)
Loss of income during treatment	38,532/-
Loss of Future Income	5,50,249/-
Pain and suffering	1,50,000/-
Special Diet	25,000/-
Conveyance	25,000/-
Attendant charges	25,000/-
Loss of amenities of life	50,000/-
Medical Expenses	4,70,615/-
Total	13,34,396/-

8. Accordingly, compensation of ₹13,73,707/- granted by the Tribunal is reduced to ₹13,34,396/-, which is rounded off to ₹13,34,400/-, and it shall carry interest @ 9% *per annum*. The reassessed compensation of ₹13,34,400/- be released forthwith to first respondent in the manner and ratio as indicated in impugned Award and the excess amount deposited alongwith statutory deposit be refunded to appellant-Insurer.

9. This appeal and the pending application are disposed of in the aforesaid terms.

(SUNIL GAUR)
JUDGE

MAY 14, 2018

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