

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

Date of Decision: August 02, 2018

+ MAC.APP. 1072/2017

RAMOD KUMAR THAKUR Appellant

Through: Mr. Varun Sarin, Advocate

Versus

SHAMSHAD & ANR. Respondents

Through: Ms. Ridhima Gaur, Advocate for
Ms.Archna Gaur, Advocate

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Award of 9th August, 2017 grants compensation of ₹7,23,300/- with interest @ 9% p.a. to appellant-Injured, aged 44 years, on account of grievous injury suffered by him in a vehicular accident, which took place on 19th June, 2013 . The facts, as noticed in the impugned Award, are as under:-

“By this order I shall dispose of the claim petition filed by the petitioner for the injuries sustained by him in a road accident on 19.06.2013 at about 9.30AM at road near Botanical Garden Metro Station within the jurisdiction of police station Section-39, Noida, U.P. due to rash and negligent driving of the vehicle no. UP 16 AM 2428 by respondent no.1, owned by respondent no.1 and insured with respondent no.2”

2. To render the impugned Award, learned Motor Accident Claims Tribunal (*hereinafter referred to as “the Tribunal”*) has relied upon

evidence of Injured (*PW-1*) and as per Disability Certificate of 10th February, 2017 (Annexure P-2), Injured had suffered 17% permanent disability in relation to left lower limb. The breakup of compensation awarded by the Tribunal is as under:-

Medical expenses	₹18,300/-
Pain & Sufferings & Enjoyment of life	₹50,000/-
Special diet, conveyance & attendant	₹25,000/-
Loss of income	₹96,000/-
Loss of future income	₹4,84,000/-
Loss of amenities	₹50,000/-
Total	₹7,23,300/-

3. Learned counsel for appellant-*Injured* assails impugned Award on the ground that the quantum of compensation awarded is inadequate. It is submitted by counsel for appellant-*Injured* that the Tribunal has erred in assessing the “*functional disability*” of the Injured as 9% and it should have been assessed at 25% because the nature of job of Injured required him to stand for a long period, which he is unable to do now, due to the disability suffered by him. Counsel for appellant-*Injured* relies upon Supreme Court’s decision in *V.Mekala Vs. M. Malathi & Anr.* (2014) 11 SCC 178 to seek addition of 40% towards “*future prospects*”. Counsel for Injured next submits that compensation granted by the Tribunal under the head of “*pain and sufferings and enjoyment of life*” is inadequate and it needs to be suitably enhanced. Thus, enhancement of compensation is sought by counsel for appellant-*Injured*.

4. On the contrary, learned counsel for respondent-*Insurer* supports the impugned Award and maintains that the compensation granted is just and proper.

5. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that in view of evidence of Injured and the medical record, Tribunal has rightly considered the “*functional disability*” at 9%. However, the Tribunal has erred in not making any addition towards “*future prospects*”. Supreme Court in *V.Mekala (Supra)*, while dealing with the case of an injured, had made addition towards “*future prospects*”. In the instant case, the Injured was working as an Associate Manager in a private company and was aged 44 years on the day of accident. The appointment letter of Injured (*Ex. PW3/1*) shows that Injured was on probation. Meaning thereby, the employment of Injured was of permanent nature. In the light of appointment letter (*Ex. PW3/1*) and disability suffered by Injured, I find that addition of 30% towards “*future prospects*” is required to be made in view of Supreme Court’s Constitution Bench decision in *National Insurance Company Ltd. Vs. Pranay Sethi & ors.* (2017) 16 SCC 680. Accordingly, the loss of earning capacity of Injured is re-assessed as under:-

$$₹32,000/- \times 12 \times 14 \times 130/100 \times 9/100 = ₹6,28,992/-$$

6. So far as compensation granted to Injured by the Tribunal under one of the *non-pecuniary* heads is concerned, I find it to be inadequate. In the face of Disability Certificate and evidence on record, it is deemed appropriate to enhance the compensation under the head “*pain and sufferings and enjoyment of life*” from ₹50,000/- to ₹1,00,000/-.

However, the compensation granted by the Tribunal under the other heads is considered to be adequate.

7. In view of aforesaid, the compensation payable to Injured is reassessed as under:-

Loss of earning capacity	₹6,28,992/-
Pain & Sufferings & Enjoyment of life	₹1,00,000/-
Loss of income during treatment	₹96,000/-
Special diet, conveyance & attendant charges	₹25,000/-
Loss of amenities of life	₹50,000/-
Medical expenses	₹18,300/-
Total	₹9,18,292/-

8. Consequentially, the compensation amount payable to Injured stands enhanced from ₹7,23,300/- to ₹9,18,292/-. Four weeks' time is granted to respondent-*Insurer* to deposit the enhanced compensation with the Tribunal concerned. The re-assessed compensation shall carry interest @ 9% *per annum* and it be disbursed to Injured in the manner as indicated in the impugned Award.

9. While modifying the impugned Award in aforesaid terms, this appeal is disposed of.

(SUNIL GAUR)
JUDGE

AUGUST 02, 2018

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