(2018) 03 DEL CK 0476

In the Delhi High Court

Case No : MAC.APP. No. 718 Of 2015, 132 Of 2018, Civil Miscellaneous No. 19672 Of 2015

New India Assurance Company Limited APPELLANT

Vs

Chaitanya Kumar Bhardwaj & Ors RESPONDENT

Date of Decision : 20-03-2018

Acts Referred:

Citation : (2018) 03 DEL CK 0476

Hon'ble Judges : Sunil Gaur, J

Bench : Single Bench

Advocate : Awantika Manohar, Lokesh Kumar Mishra, Himanshu Sharma

Final Decision : Disposed Of

Judgement

Sunil Gaur, J

1. Impugned Award of 8th July, 2015 grants compensation of Rs. 34,19,342/- with interest @ 9% to Chaitanya Kumar Bhardwaj on account of the injuries sustained by him in a vehicular accident on 27th December, 2012. The breakup of the compensation granted by the Motor Accident Claims Tribunal (hereinafter referred to as Tribunal) is as under:-

1

Future Loss of Income

Rs. 29,16,000.00

2

Toward Pain Shock & Suffering

Rs. 50,000.00

3

Towards Loss of Amenities & Enjoyment of Life

Rs. 50,000.00

4

Towards servant/attendant charges

Rs. 20,000.00

5

Towards conveyance & special diet

Rs. 20,000.00

6

Towards medical bills

Rs. 1,01,342.00

7

Towards Loss of Wages

Rs. 1,62,000.00

8

Towards Loss of Marriage Prospects

Rs. 1,00,000.00

Total =

Rs. 34,19,342.00

2. In the above captioned first appeal, The New India Assurance Co. (hereinafter referred to as the Insurer) seeks reduction of the quantum of compensation whereas in the above captioned second appeal, Chaitanya Kumar Bhardwaj (hereinafter referred to as the Injured) seeks enhancement of compensation. Since these appeal are directed against common impugned Award, therefore, these appeals have been heard together and are being decided by this common judgment.

3. Since the factual aspects are already noticed in the opening paragraphs of the impugned Award and so, needs no reproduction. The challenge to the impugned Award by the Insurer is principally on the ground that the disability suffered by the Injured was not permanent. It is also the case of learned counsel for Insurer that the functional disability has been erroneously assessed at 50% and in view of the nature of injury sustained by the Injured, it ought to have been assessed at 30%. It is also the submission of learned counsel for Insurer that there is no documentary evidence to support the claim of Injured regarding his income.

4. On the contrary, learned counsel for Injured seeks enhancement on the ground that future prospects of Injured have been curtailed due to the injury suffered by him in this accident but still no compensation under this head has been granted to him. It is pointed out that Injured was 25 years of age at the time of the accident and so 50% addition ought to have been made towards future prospects of the Injured. The submission of counsel for Injured is that the functional disability is actually 100% and not 50% as the Injured cannot effectively work in the field in which he was working and so, he has become a monk. Learned counsel for Injured submits that the compensation granted under the head of pain and suffering is inadequate and it needs to be enhanced from Rs. 50,000/- to Rs. 2,00,000/-. Enhancement of compensation granted under the head of loss of marriage prospects is sought from Rs. 1,00,000/- to Rs. 2,00,000/- by learned counsel for the Injured. It is pointed out by learned counsel for Injured that the attendant charges granted by the Tribunal are inadequate and it needs to be enhanced from Rs. 20,000/-to Rs. 1,00,000/-. Nothing else is urged by either side.

5. Upon hearing and on perusal of impugned Award and the evidence on record, I find that as per evidence of Dr.A.K.Mishra (PW-3), the physical impairment has not been described as permanent disability but in the cross-examination, the answer given by witness to the question put by the Insurer is as under:-

"Q. I put to you is there any possibility of further improvement in the said disability assessed. Is there any effect of such disability on the day to day activities of patient?

A. As on today, I could say there are remote chances of improvement in his condition."

6. It is evident from the aforesaid answer that the disability suffered by the injured was in fact of permanent nature. So far as the functional disability is concerned, the Tribunal has assessed it to be 50%. The Injured in his evidence by way of affidavit has asserted that due to the injury suffered by him in this accident, he feels no power in his right hand and he has met various doctors but to no avail. Injured in his evidence by way of evidence claimed that out of frustration, he has become monk or saint as he is unable to work, his marriage prospects have ruined and he is dependent upon others for his day to day routine work and has no source of earning now. Nothing more is said by the injured in his evidence by way of affidavit regarding the functional disability. There is no cross-examination of the Injured by Insurer on the functional disability suffered by him. This Court is of the considered view that the Tribunal has rightly assessed the functional disability of Injured at 50%. Enhancement on the plea of functional disability being 100% is thus rejected.

7. Regarding the income of Injured, there are salary slips on record and even the employer has been examined and so, no case for reduction of the compensation on this account is made out. The Injured was earning Rs. 27,000/- when he had

sustained the injuries in this accident. Though Injured had received the interview call from RITES (Wing) of Indian Railways and he could not appear for the said interview due to the injuries suffered in the accident but there is no evidence on record to show what was the salary being offered to him by RITES (Wing) of Indian Railways. Since Injured was working as Marketing Manager at a salary of Rs. 27,000/- per month plus incentives, therefore, it can be reasonably assumed that due to the disability suffered by him in this accident, the prospects of his promotion etc. would have been substantially compromised. Considering the nature of employment of Injured and the functional disability suffered by him, the Tribunal ought to have granted reasonable compensation under the head of 'loss of future income'.

8. In an injury case, Supreme Court in Raj Kumar Vs. Ajay Kumar (2011) 1 SCC 343 has assessed the loss of future earnings by adopting the applicable multiplier with reference to the age. Recently, Supreme Court in Jagdish Vs. Mohan & Ors. 2018 SCC OnLine SC 184 while dealing with the case of an injured has declared that the loss of future prospects should not be confined only to those who have permanent job and would extend to self-employed or fixed salary individuals also. The Injured was having fixed income of Rs. 27,000/- per month and so addition of 40% towards future prospects ought to be made in view of a recent Supreme Court decision in Jagdish (supra). By adding 40% towards future prospects and by applying multiplier of 18, the loss of future income of Injured is re-assessed at Rs. 40,82,400/-.

9. After having scrutinized the evidence on record, I find that no case for enhancement of compensation under other heads is made out. In the considered opinion of this Court, the reasonable compensation to which the Injured is entitled to, is as under:-

1

Future Loss of Income

Rs. 40,82,400.00

2

Toward Pain Shock & Suffering

Rs. 50,000.00

3

Towards Loss of Amenities & Enjoyment of Life

Rs. 50,000.00

4

Towards servant/attendant charges

Rs. 20,000.00

5

Towards conveyance & special diet

Rs. 20,000.00

6

Towards medical bills

Rs. 1,01,342.00

7

Towards Loss of Wages

Rs. 1,62,000.00

8

Towards Loss of Marriage Prospects

Rs. 1,00,000.00

Total =

Rs. 45,85,742.00

10. In view of the aforesaid, the compensation granted by the Tribunal is enhanced form Rs. 34,19,342/- to Rs. 45,85,742/- with interest @ 9% per annum. The mode of disbursal shall be the same as indicated in the impugned Award. The Insurer is directed to deposit the enhanced compensation with the Tribunal within a period of four weeks and thereafter, the Tribunal shall forthwith release the enhanced compensation to the Injured. After deposit of enhanced compensation by the Insurer, the statutory deposit be refunded to Insurer as per rules.

11. With aforesaid directions, these two appeals and the application are disposed of.

