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

Date of Decision: April 16, 2018

\+ **MAC.APP. 384/2015 & CM 7629/2015**

UNITED INDIA INSURANCE CO LTD ..... Appellant
Through: Mr. S.K Ray and Ms. Neetika Chaturvedi, Advocates

versus

PAWAN SEHGAL & ORS .....Respondents
Through: Mr. Rajiv Garg and Ms. Pankhi Harmilapi, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Motor Accident Claims Tribunal, West-01, Delhi *(hereinafter referred to as the Tribunal)* vide impugned Award of 19th January, 2015 grants compensation of ₹47,81,187/- to first respondent, who was grievously injured in a vehicular accident on 29th April, 2010. The facts, as noted in impugned Award, are as under: -

> *"Brief facts of the case of petitioner is that on 29/04/2010 at about 6.15 a.m. was travelling in his Car bearing No. HR-01S7833 and when he reached at near Metro Station, Tilak Nagar, Delhi and when the petitioner opened the door of his car to came out, suddenly the*

offending vehicle No. PB10-B-1513(Bolero Pickup Van) which was driven by its driver/respondent No. 1 in rash and negligent manner hit the petitioner. Resultantly, the petitioner fell down and sustained injuries. In total, the petitioner has claimed Rs. 50,00,000/- as compensation on account of the injuries sustained by injured in the accident."

2. The breakup of the compensation granted by the Tribunal is as under: -

" ***The total compensation is assessed as under:-***

Treatment expenses:	*₹9,87,268/-*
Compensation for Future treatment & implantation	*₹3,60,000/-*
Pain and sufferings:	*₹ 50,000/-*
Conveyance & special diet:	*₹ 20,000/-*
Loss of income during treatment period	*₹3,83,112/-*
Compensation on account of disability:	*₹29,30,807/-*
Compensation on account of loss of amenities of life and enjoyment of life	*₹ 50,000/-*
Total:	***₹47,81,187/-*** "

3. First respondent was aged 29 years on the day of accident and by applying multiplier of 17, *'loss of earning capacity'* has been assessed at ₹29,30,806.8/-, which has been rounded off to ₹29,30,807/- while taking the income of respondent-Injured at ₹63,852/- per month. Towards *'future prospects'*, 50% has been added and thereafter, the *'loss of earning capacity'* has been assessed while taking the permanent disability suffered to be 27% and the functional disability at 13%.

4. The challenge to impugned Award by learned counsel for appellant-Insurer is on the ground that no addition towards *'loss of future earnings'* is to be made and the *'conveyance allowance'* awarded is not justified. Learned counsel for appellant-Insurer further submits that the yearly job bonus has been wrongly taken into consideration and that respondent-Injured had received salary for the period he had remained hospitalized and so, the *'loss of income'* during treatment period has been wrongly granted. It is submitted that as per the evidence of Record-Keeper from the concerned hospital, ₹2 lacs was paid by Medi-Claim Insurance and so, the medical expenses assessed ought to be reduced by ₹2 lacs. So, it is submitted that the compensation assessed by the Tribunal ought to be suitably reduced.

5. On the other hand, learned counsel for respondent-Injured submits that leave encashment was adjusted to pay the salary for period of hospitalization and in view of decision in *Sunil Kumar v. Pyar Mohd. & Ors.*, 2016 (2) AD (Delhi) 359, the compensation under the head of *'future loss of earning'* is payable to respondent-Injured. Learned counsel for respondent-Injured thus submits that no case for reduction of quantum of compensation is made out.

6. In rebuttal, it is submitted by learned counsel for appellant-Insurer that the Tribunal has taken the income of respondent-Injured as ₹63,852/- i.e. the salary before the accident and after the accident, the annual package of respondent-Injured was ₹17.63 lacs *per annum* w.e.f. 3rd July, 2012. That is to say, ₹1,46,916/- *per month*.

7. Upon hearing and on perusal of impugned Award, evidence on record and the decision cited, I find that the evidence regarding *'loss of*

future prospects' is lacking and so, reliance placed upon decision in *Sunil Kumar (supra)* is of no avail to the case of respondent-Injured. As such, addition of 50% made by the Tribunal towards *'future prospects'* is disallowed and compensation granted under the head of '*loss of earning capacity'* is reassessed at ₹16,93,355/- (₹63,852/-X 12 X 17 X 13/100). So far as grant of *'conveyance allowance', 'treatment expenses'* and the adjustment of yearly job bonus or the deduction of ₹2 lacs paid by the Medi-Claim Insurer is concerned, I find that there is no effective cross-examination of the concerned witnesses on these aspects and therefore, no case for reduction of compensation under these heads is made out.

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

Treatment expenses:	₹ 9,87,268/-
Compensation for Future treatment & implantation	₹ 3,60,000/-
Pain and sufferings:	₹ 50,000/-
Conveyance & special diet:	₹ 20,000/-
Loss of income during treatment period	₹ 3,83,112/-
Compensation on account of disability:	₹ 16,93,355/-
Compensation on account of loss of amenities of life and enjoyment of life	₹ 50,000/-
Total:	₹ **35,43,735/-**

9. In light of aforesaid, compensation granted by the Tribunal to respondent-Injured is reduced from ₹47,81,187/- to ₹35,43,735/-. Impugned Award is accordingly modified to the aforesaid extent. The re-assessed compensation shall carry the interest @ 9% *per annum* and it shall be disbursed in the manner and ratio as indicated in the impugned

Award. Appellant-Insurer shall deposit the modified compensation in terms of this judgment within a period of four weeks from today with the Registry of this Court and thereupon, it be released forthwith to respondent-Injured in the manner indicated in the impugned Award. Subject to appellant-Insurer depositing the modified compensation in terms of this judgment, statutory deposit, if any, be refunded to appellant-Insurer, as per Rules.

10. With aforesaid directions, this appeal and the application are disposed of.

(SUNIL GAUR)
JUDGE

APRIL 16, 2018
s