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

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Date of Decision: 11.12.2014

+ MAC.APP. 1024/2012

SUNIL KUMAR

..... Appellant

Through: Mr. Pratap Singh, Advocate with
appellant-in-person.

versus

BINDU SINGH & ORS

..... Respondents

Through: Mr. P. K. Seth and Mr.Shoumik
Mazumdar, Advocates for R-3.

+ MAC.APP. 1048/2012 & CM 18110/2014

NEW INDIA ASSURANCE CO LTD

..... Appellant

Through: Mr. P. K. Seth and Mr.Shoumik
Mazumdar, Advocates

versus

SUNIL KUMAR & ORS

..... Respondents

Through: Mr. Pratap Singh, Advocate with
appellant-in-person.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (Oral)

1. These are two appeals filed seeking to impugn the Award dated 14.03.2012.

2. MAC. APP. 1048/2012 is filed by the Insurance Company seeking to
MAC.APP.1024/2012 & 1048/2012

impugn the compensation awarded and the liability which is fastened on the Insurance Company.

3. MAC. APP. 1024/2012 is filed by the claimant Sh.Sunil Kumar seeking enhancement of compensation awarded.

4. The brief facts are that the claimant, Sunil Kumar who was working in BSF on 15.08.2005 was crossing the road at Church Road, R.K.Puram, New Delhi. He was hit by an Canter Eicher said to be driven in a rash and negligent manner. Due to the forceful impact he suffered head injuries and became unconscious. He went into a 'coma'

5. One of the controversies pertains to the compensation awarded to the claimant. The Tribunal awarded a total compensation of Rs.25,15,000/- as follows:-

Medical expenses	Rs.50,000/-
Pain and Sufferings & Enjoyment of life	Rs.2,00,000/-
Special Diet, Attendant & Conveyance Charges	Rs.3,50,000/-
Loss of income/future income	Rs.18,15,000/-
Loss of amenities & enjoyment of married life	Rs.1,00,000/-
Total	Rs.25,15,000/-

6. Learned counsel appearing for the claimant seeks enhancement of compensation. He submits that when the accident took place in 2005 the claimant had a salary of Rs.6,302/- per month and subsequently in 2008 the salary had increased to more than Rs.13,000/- per month. Hence, for the purpose of assessing compensation the appropriate salary should be taken as

Rs.13,000/- per month. He further submits that the claimant was getting quarter allowance of Rs.3,300/- per month for which amount he is to also be compensated. This compensation would be on account of the fact that he has been removed from the Border Security Force (BSF), his employer and he will become homeless. Hence he is entitled to enhancement of salary for purpose of assessing loss of income by Rs.3,300/- p.m. which he was entitled to in lieu of the quarter. It is next submitted that the income has to be enhanced while computing compensation as the claimant was receiving bonus and this component has to be added to the salary. It is next submitted that the Tribunal has awarded Rs.1 lac for loss of amenities & enjoyment of married life which is grossly inadequate. It is lastly submitted that no amount has been awarded on account of future medical treatment.

7. Learned counsel appearing for the Insurance Company on the other hand has sought reduction of the compensation awarded. He submits that as per the evidence on record the claimant has now retired from BSF but he is getting a pension of Rs7,400/- per month w.e.f. 01.01.2011. He submits that this has to be taken into account while computing loss of income/future income. He further submits that after having assessed the income of the claimant at Rs.6,302/- per month the Tribunal has wrongly enhanced the same on account of future prospects by 50% while computing compensation. He next submits that Rs.3 lacs has been awarded by the Tribunal for attendant charges which is on the higher side. The next submission is that deduction of 1/3rd has to be made from the assessed income for assessing the loss of income due to permanent disability. It is lastly submitted that the driver of the offending vehicle had no RC or driving license to drive an LTV, the vehicle in question

and hence, the Insurance Company is entitled for recovery rights from the owner of the offending vehicle.

8. A perusal of the award shows that the Tribunal noted that PW-11/Dr.D.R.Tripathi has proved the disability certificate as Ex.PW-11/A which states that the claimant has 98% disability. The Tribunal further notes that the claimant is in a state of mere vegetative existence only. The Tribunal also notes that the claimant was working as a sweeper in BSF. Accordingly, the Tribunal assessed the functional disability at 100%. Based on the salary slip of June 2005, the gross salary was taken as Rs.6,302/- per month. The Tribunal noted that the claimant has now retired from services and is on pension. 50% of the income was enhanced for future prospects and loss of income using a multiplier of 16 was calculated at Rs.18,14,976/- (rounded off to Rs.18,15,000/-). The Tribunal did not deduct the pension amount from the compensation awarded for loss of income.

9. I will first deal with the submissions of the learned counsel for the Insurance Company in MAC. APP. 1048/2012.

10. As far as the pension issue is concerned, it is on record that the claimant is getting a pension of Rs.7,400/- per month w.e.f. 01.01.2011. However, the legal position in this regard is settled. In the case of ***Vimal Kanwar and Ors. vs. Kishore Dan and Ors. AIR 2013 SC 3830: MANU/SC/0460/2013*** the Supreme Court held as follows:

“19. The first issue is "whether Provident Fund, Pension and Insurance receivable by claimants come within the periphery of the Motor Vehicles Act to be termed as "Pecuniary Advantage" liable for deduction."

The aforesaid issue fell for consideration before this Court in ***Helen C. Rebello (Mrs) and Ors. v. Maharashtra State Road Transport Corporation and Anr.*** reported in MANU/SC/0621/1998 : (1999) 1 SCC 90. In the said case, this Court held that Provident Fund, Pension, Insurance and similarly any cash, bank balance, shares, fixed deposits, etc. are all a "pecuniary advantage" receivable by the heirs on account of one's death but all these have no correlation with the amount receivable under a statute occasioned only on account of accidental death. Such an amount will not come within the periphery of the Motor Vehicles Act to be termed as "pecuniary advantage" liable for deduction. The following was the observation and finding of this Court:

35. Similarly, family pension is also earned by an employee for the benefit of his family in the form of his contribution in the service in terms of the service conditions receivable by the heirs after his death. The heirs receive family pension even otherwise than the accidental death. No correlation between the two. Similarly, life insurance policy is received either by the insured or the heirs of the insured on account of the contract with the insurer, for which the insured contributes in the form of premium. It is receivable even by the insured if he lives till maturity after paying all the premiums. In the case of death, the insurer indemnifies to pay the sum to the heirs, again in terms of the contract for the premium paid. Again, this amount is receivable by the claimant not on account of any accidental death but otherwise on the insured's death. Death is only a step or contingency in terms of the contract, to receive the amount.”

11. Accordingly, in view of the above legal position the fact that the claimant is getting a pension from the BSF would not be a ground to reduce the compensation payable due to loss of income.

12. On the issue of future prospects @ 50% as added by the Tribunal to the assessed income for the purpose of assessing loss of income due to disability, reference may be had to the judgment of the Supreme Court in the case of **V. Mekala vs. M. Malathi & Anr 2014 ACJ 1441**. The Supreme Court awarded future prospects in the said case while computing loss of income due to disability. There is no merit in the said contention that the income should not be enhanced for future prospects.

13. As far as attendant charges are concerned, it is on record that the accident took place on 15.08.2005. The claimant went into 'coma' and his condition remained critical. He remained in Safdarjung Hospital till 18.10.2005. Thereafter he was shifted to BSF Hospital, R.K. Puram, New Delhi where he remained till 27.04.2006 i.e. for more than 6 months. He has been admitted in hospital for several days thereafter on account of throat problem and breathing problem. He has also suffered cataract in both his eyes for which he was operated upon. He has been going for physiotherapy in Safdarjung Hospital till November 2008. PW-10 Dr. Gul Motwani, Senior Specialist, ENT, Safdarjung Hospital has said that the record shows that the claimant had difficulty in breathing for which he was Tracheostomist (i.e. a hole was made in front of the neck in the air pipe. A tube was put in front of the neck of the patient and he was made to breathe by this tube).

14. Even as per the certificate filed by PW-8, Inspector Jagdish Chand, Ex.PW-8/1 the claimant was hospitalised for the following period:-

- | | | | |
|----|--------------------------|---|---------------------------|
| a) | 15.08.2005 to 18.10.2005 | : | Safdarjung Hospital, N/D |
| b) | 18.10.2005 to 27.04.2006 | : | BSF Hospital, R.K. Puram |
| c) | 25.04.2007 to 27.04.2007 | : | Safdarjung Hospital, N/D |
| d) | 07.06.2007 to 22.06.2007 | : | Safdarjung Hospital, N/D |
| e) | 10.12.2007 to 15.12.2007 | : | Safdarjung Hospital, N/D” |

15. In the light of the prolonged medical treatment undergone by the claimant, award of Rs.3,50,000/- for special diet, conveyance and attendant charges is in order.

16. As far as deduction of 1/3rd for personal expenses is concerned, in view of the judgment of the Supreme Court in the case of ***Raj Kumar vs. Ajay Kumar, (2011) 1 SCC 343*** no such deduction is necessary. Even otherwise in the facts and circumstances of the case, I see no reason to deduct 1/3rd for personal expenses as claimed by the counsel for the Insurance Company.

17. As far as the issue of driving license of the driver of the offending vehicle and RC of the offending vehicle is concerned, the Tribunal noted that the appellant has examined R3W1 Sh. Vijay Prakash Bara, Senior Assistant, New India Insurance Co., who had proved the report of the licensing authority and that of the investigator. The Tribunal noted that as per the report of the District Transport Officer, Aurangabad, Bihar, the driving license was valid for LMV for the relevant period. The Tribunal also notes that the offending vehicle as per certificate in the present case is an LTV i.e. light traffic vehicle. Hence, the Tribunal concluded that the license possessed by the driver of the offending vehicle at the time of the accident was valid for driving the said type of vehicle. No submission was made by the insurance company regarding the RC. Hence the Tribunal did not accept the contention of the Insurance

Company.

18. Section 10 (2) of the M.V. Act, 1988 lists various classes of driving licenses which includes light motor vehicles and transport vehicles.

19. Section 2 (21) of the M.V. Act, 1988 defines a light motor vehicle to mean a transport vehicle with specified weight. A transport vehicle is separately defined under Section 2 (47) of the Act to mean a goods carriage and apart from others. Admittedly the driver had a license to drive an LMV. The offending vehicle was an LTV i.e. light traffic vehicle. Learned counsel for the Insurance Company has not been able to show as to how the driver of the offending vehicle was not entitled to drive a light traffic vehicle in view of the fact he had a LMV license.

20. Further the certificate of registration of the said vehicle describes the offending vehicle as follows:-

“description of vehicle LTV (e.g. Flat/Ambassador/Maruti, Tata goods/Ashoka Leyland goods Vehicle Trailor motor Cycle with/without gear. Motor Cycle with side car etc..”

The certificate also states that the un-laden weight of the said vehicle is 2950 kg and the gross weight is 5950 kg. A transport vehicle whose unladen weight does not exceed 7500 kg is an LMV. This is as per Section 2 (21) of the Act which defines LMV. Hence the driver as license holder of an LMV was entitled to drive the offending vehicle.

21. In view of the above there is no merit in the appeal of the Insurance Company. The same is dismissed. All interim orders stand vacated. Statutory amount, if paid, be refunded to the Insurance Company.

22. I will now deal with MAC APP.1024/2012 filed by the claimant.

23. I will first deal with the issue raised regarding the salary as assessed by the Tribunal of the claimant. As per the salary slip placed on record i.e. Ex. PW-1/8 the total emoluments of the claimant are Rs.6,302/- in the month of June 2005. It is true that the salary slip of September 2008 Ex.PW-1/9 gives the gross pay as Rs.13,167/-. However, it is the salary as on the date of the accident which would be the relevant salary. Further, in any case, the Tribunal has while computing loss of income enhanced the said salary by 50% on account of future prospects/rise of salary. Hence future increase of income has been factored in while computing loss of income. Hence, there is no merit in the contention of the claimant that the salary @ Rs. 13,167/- per month should be taken for purposes of computing loss of income.

24. Regarding bonus, a perusal of the salary slip Ex. PW.1/8 does not show any bonus being paid to the claimant. There is no proof to show as to how bonus can be claimed by the claimant or was being received by the claimant. There is no merit in the said plea.

25. It is further claimed that quarter allowance of Rs.3,300/- per month was receivable by the claimant. However, this contention is not supported by the salary slip Ex.PW1/8. No such averment is also made by PW-8, Inspector Jagdish Chand from the office of BSF who had proved the employment background of the claimant. PW-8 has also filed the salary statement for the month October 2009 as Ex.PW-8/3 which also does not mention anything about quarter allowance.

26. In view of this evidence, it is not possible to accept the contention of the claimant about the grant of quarter allowance.

27. As far as future treatment is concerned, the claimant failed to place on

record any document or any medical opinion to show as to the type of future medical treatment that he would require. He has also not been able to show as to whether if there is need for future treatment, as to whether the claimant can get this treatment done from the concerned BSF hospital or would have to pay for himself such future medical treatment.

28. However, keeping in view the nature of injuries suffered by the claimant, in my view some kind of medical treatment would necessarily have to be done by the claimant later on. Keeping in view the nature of evidence place on record, I award a sum of Rs.1 lac for future medical treatment.

29. Keeping in view the nature of injuries suffered, I also enhance the compensation for pain and suffering and enjoyment of life from Rs.2 lacs to Rs.3 lacs.

30. I may also note what has gone unnoticed is that there is a medical disability certificate placed on record dated 11.06.2010 regarding the claimant issued by Safdarjung Hospital, New Delhi which gives the disability of the claimant as 75% and indicates the disability as follows:-

“TRAUMATIC BRAN INJURY WITH RESUDIAL QUADRIP
ARESIS WITH ATAXIA”

31. I am mentioning this fact only to bring on record the correct and full facts. However, in my opinion given the nature of injuries suffered by the claimant and the background that he was working as a sweeper in BSF, I see no reason to change the functional disability assessed by the Tribunal @ 100% based on this disability certificate. In fact there is no submission to this effect also by the Insurance Company.

32. Total compensation would now payable is as follows:-

Medical expenses	Rs.50,000/-
Pain and Sufferings & Enjoyment of life	Rs.3,00,000/-
Special Diet, Attendant & Conveyance Charges	Rs.3,50,000/-
Loss of income/future income	Rs.18,15,000/-
Loss of amenities & enjoyment of married life	Rs.1,00,000/-
Future Medical Treatment	Rs.1,00,000/-
Total	Rs.27,15,000/-

33. In view of the above, the present appeal stands disposed of.

34. The insurance company may deposit the additional compensation of Rs.2 lacs as awarded by this order along with interest @ 7.5% per annum from the date of the filing of the claim petition till deposit before the Registrar General of this court within six weeks from today. On receipt of the said sum, the Registrar General may release the same to the claimant proportionately as per the directions in the award.

JAYANT NATH, J.

DECEMBER 11, 2014

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