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

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Date of Decision: October 30, 2014

+ MAC.APP. 715/2013

AMITAVA ACHARJEE

..... Appellant

Through

Mr.A.K.Mishra, Mr.Hemant ,
Mr.N.K.Beniwal and Mr.Ashok
Mahipal, Advocates with appellant in
person

versus

KULWANT SINGH & ORS

..... Respondent

Through

Mr.Pankaj Seth, Advocate for the
Insurance Company

+ MAC.APP. 781/2013

THE NEW INDIA ASSURANCE CO LTD..... Appellant

Through

Mr.Pankaj Seth, Advocate

versus

MS ANURADHA ACHARJEE AND ORS..... Respondent

Through

Mr.A.K.Mishra, Mr.Hemant ,
Mr.N.K.Beniwal and Mr.Ashok
Mahipal, Advocates alongwith
Mr.Amitava Chatterjee in person

+ MAC.APP. 774/2013

AMITAVA ACHARJEE

..... Appellant

Through

Mr.A.K.Mishra, Mr.Hemant ,
Mr.N.K.Beniwal and Mr.Ashok
Mahipal, Advocates alongwith appellant
in person

versus

KULWANT SINGH & ORS

..... Respondent

Through

Mr.Pankaj Seth, Advocate for the
Insurance Company

+ MAC.APP. 778/2013

THE NEW INDIA ASSURANCE CO LTD..... Appellant

	Through	Mr.Pankaj Seth, Advocate
	versus	
		SHRI AMITAVA ACHARJEE AND ORS..... Respondent
	Through	Mr.A.K.Mishra, Mr.Hemant , Mr.N.K.Beniwal and Mr.Ashok Mahipal, Advocates alongwith Amitava Chatterjee in person
+		MAC.APP. 783/2013
		THE NEW INDIA ASSURANCE CO LTD Appellant
	Through	Mr.Pankaj Seth, Advocate
	versus	
		SHRI AMITAVA ACHARJEE AND ORS Respondent
	Through	Mr.A.K.Mishra, Mr.Hemant , Mr.N.K.Beniwal and Mr.Ashok Mahipal, Advocates alongwith Amitava Chatterjee in person
+		MAC.APP. 772/2013
		AMITAVA ACHARJEE & ORS Appellant
	Through	Mr.A.K.Mishra, Mr.Hemant , Mr.N.K.Beniwal and Mr.Ashok Mahipal, Advocates alongwith appellant in person
	versus	
		KULWANT SINGH & ORS Respondent
	Through	Mr.Pankaj Seth, Advocate for the Insurance Company
+		MAC.APP. 780/2013
		ANURADHA ACHARJEE Appellant
	Through	Mr.A.K.Mishra, Mr.Hemant , Mr.N.K.Beniwal and Mr.Ashok Mahipal, Advocates
	versus	
		KULWANT SINGH & ORS Respondent
	Through	Mr.Pankaj Seth, Advocate for the Insurance Company

JYANT NATH, J. (ORAL)

1. These are seven appeals three of them have been filed by the Insurance Company seeking to impugn the Award and four appeals have been filed by the claimants seeking enhancement of the compensation. The brief facts are that on 28.12.2008 four members of the family, namely, Amitava Acharjee, his wife Mondira Acharjee, daughter Anuradha Acharjee and son Ayush Acharjee were returning from Amritsar to Delhi. Shri Amitava Acharjee was driving the car. When they reached near Bahalgarh crossing, GT Road, Sonipat, a truck driven by Kulwant Singh driver of the offending vehicle rashly and negligently overtook the car of Mr.Amitava Acharjee and without giving any indicator turned towards the left side. Having turned to the left the vehicle came to a halt leaving no space for the vehicle of the claimant. Shri Amitava Acharjee applied sudden emergency brakes but on account of there being no space left by the offending vehicle his vehicle struck against the rear portion of the offending vehicle. All four occupants suffered injuries and were moved to the Civil Hospital. Smt.Mondira Acharjee succumbed to her injuries.

MAC.APP.No.715/2013

2. First I will deal with the Mac.App.No.715/2013. This is an appeal filed by the claimant and pertains to claim petition No.149/2010 by which the claimants had sought compensation for the damage caused to their vehicle. It is submitted by the claimants that their insurance policy related only to a third party insurance, theft, FIR and P.A. and not damage to the vehicle. It is urged that the Tribunal noted that the claimants had incurred an expense of Rs.1,08,120/- on repair of the vehicle. The Tribunal, however, noted that the bills pertained to new parts fitted in the car. The Tribunal further noted that the

car was about eight years old. Hence, in the facts and circumstances the Tribunal awarded Rs.50,000/- as just compensation on account of damage to the vehicle of the claimants.

3. Learned counsel appearing for the appellant has strenuously urged that merely because the vehicle was eight years old would not mean that the claimant should be deprived of the expenses actually incurred by claimant and that the claimant should be reimbursed the full expenses incurred in the repair of the car, namely, Rs.1,08,120/-.

4. In my opinion, there is no merit in the present appeal. The Tribunal has rightly awarded Rs.50,000/- as just and fair compensation on account of damage to the vehicle of the claimant. Keeping in view the fact that the vehicle was about eight years old there is no reason to interfere in the Award. The present appeal is dismissed.

MAC.APP.No.774/2013 & 783/2013

5. MAC.APP.No.774/2013 is filed by the claimant Shri Amitava Acharjee seeking enhancement of compensation awarded to him. MAC. App. No.783/2013 is filed by the insurance company seeking to impugn the Award of compensation granted in the claim petition No.154/2010 filed by Shri Amitava Acharjee. It was the case of the claimant Shri Amitava Acharjee that due to the accident he suffered injuries and was taken to Kailash hospital. He was said to have been diagnosed with post trauma epilepsy, fracture parietal depressed fracture 8 mm with pneumocephalous and his left ear was ruptured which was operated upon twice on 29.12.2008 and 8.1.2009. It is urged that even after the operation there is a deformity in his face which has reduced chances of his remarriage considerably and he has neurological disorder

because of the depressed fracture. He has stated that he is an advocate by profession and was earning Rs.3,19,853/- per annum and because of the accident he remained in bed for three months and had to follow up for treatment for about two years. Reliance is placed on disability certificate Ex.PW1/78 to state that he is suffering hearing impairment of about 40%.

6. The Tribunal based on the evidence on record assessed the functional disability of Shri Amitava Acharjee at 10% and awarded the following compensation:-

1.	Pain and sufferings	Rs.80,000/-
2.	Loss of enjoyment and amenities	Rs.60,000/-
3.	Loss of earnings due to disability	Rs.5,40,552/-
4.	Loss of earnings for three months @ Rs.26,654/- per month	Rs.79,962/-
5.	Compensation towards special diet and conveyance	Rs.10,000/-
6.	Medical bills	Rs.25,130/-
	Total	Rs.7,95,644/-

7. Learned counsel appearing for the appellant/Amitava Acharjee states that the functional disability has been wrongly assessed at 10%. He submits that the claimant has suffered hearing disability which over time is likely to deteriorate. He submits that the functional disability should have been at least assessed at 20%. He secondly submits that the Tribunal while assessing loss of earnings for three months has taken the income as Rs.26,654/- per month. He submits that the income of the claimant has been assessed on the Income Tax Return for the year 2009-10 (Ex.PW1/77). This shows the gross income of

Rs.3,19,853/-. He submits that the Tribunal for assessing the monthly income has divided this figure by 12 for being 12 months in a year and assessed the monthly earnings as Rs.26,654/- per month and awarded Rs.79,962/- as loss of earning for three months. It is submitted that the return for 2009-10 was actually return of nine months of work inasmuch as admittedly the claimant was on bed rest for three months. Hence, it is submitted that the figure of Rs.3,19,853/- had to be divided by 9 to come at the monthly figure which would come to Rs.35,539/- per month. Hence, according to the appellant the loss of earning for three months would be Rs.1,06,617/- instead of Rs.79,962/-. It is lastly submitted that no compensation has been awarded for disfigurement.

8. As far as functional disability is concerned PW1 Amitava Acharjee has in his evidence said that he has deformity in the face which has reduced chances of remarriage. He further said that he is having neurological disorder because of the depressed fracture in the skull. He has stated that he is unable to concentrate for more than an hour at a stretch and this is hampering his day to day life and profession. He further states that loss of hearing is a big problem in the legal profession.

9. There is no cross-examination of PW-1 on this aspect.

10. Similarly, PW-11 Dr.Rakesh Kumar, Associate Professor, ENT Department, AIIMS, New Delhi has confirmed that he is a member of the Disability Board and that Shri Amitava Acharjee has suffered permanent disability of less than 40% in relation to hearing loss. He has stated that he is unable to assess disability in relation to the whole body and that the fact of disability of a particular person will depend on the nature of job/avocation of the person. He has affirmed that hearing power can be improved with the help

of a hearing aid but cannot be fully improved.

11. Keeping in view the fact that the claimant Shri Amitava Acharjee is an advocate by profession, in my opinion, the faculty of hearing would be important for discharge of his professional duties. Impairment of hearing would hamper his functioning as an advocate. In my opinion, it would be appropriate that the functional disability of the claimant is increased from 10% to 20%. Loss of earning due to disability would hence now be Rs.10,81,103/- (Rs.4,15,809 x 13 x 20/100)

12. Regarding the second submission pertaining to the loss of earnings for three months as per the claimant the Income Tax Return for the year 2009-10 is for earning of nine months. It was for the claimant to have filed his earlier ITRs which admittedly he has not filed. Hence, I see no reason to increase the compensation on account of loss of earnings for three months.

13. On the third contention of disfigurement no evidence has been placed on record to show any disfigurement which would warrant compensation for the same. I reject the said contention of the appellant.

14. Coming to the contentions of the appellant/insurance company, the learned counsel has contended that there is no loss of earning capacity and that the claimant is in a position to earn and carry on his livelihood and he continues to do well in the profession. In my opinion, keeping in view of the reasoning stated above there is no merit in the said contentions. Hence, MAC.App.No.774/2013 and 783/2013 are accordingly disposed of.

15. Total compensation payable to Shri Amitava Acharjee would be as follows:-

1.	Pain and sufferings	Rs.80,000/-
2.	Loss of enjoyment and amenities	Rs.60,000/-
3.	Loss of earnings due to disability	Rs.10,81,103/-
4.	Loss of earnings for three months @ Rs.26,654/- per month	Rs.79,962/-
5.	Compensation towards special diet and conveyance	Rs.10,000/-
6.	Medical bills	Rs.25,130/-
	Total	Rs.13,36,195/-

MAC.APP.No.772/2013 & 778/2013

16. These two appeals arise out of Petition.No.167/2010 pertaining to the death of Smt.Mondira Acharjee. MAC.App.No772/2013 is filed by the claimants for enhancement of compensation. MAC.App.No.778/2013 is filed by the insurance company seeking to impugn the Award.

17. Smt.Mondira Acharjee succumbed to her injuries in the accident. She is stated to have done graduation in Science and was an ICWA (later upgraded as FICWA). She was 42 years of age working with M/s.Jai Prakash Associates as Deputy Financial Controller. She was stated to be getting a salary of Rs.49,180/- per month besides various other incentives. The Tribunal based on the evidence of PW-1 Shri Amitava Acharjee, PW-2 Shri Arun Kumar Sharma, Officer Personal from Jai Prakash Associates Ltd., PW-5 Mr.Ajay Rajoria, Manager, Accounts from Jai Prakash Associates Ltd., PW-6 Shri T.D.Joshi, AGM Shares, Jai Prakash Associates, PW-7 Shri Sandeep Vasudeva, Assistant Manager, Secretarial, Jai Prakash Associates, PW-8 Shri Gautam Gupta, Assistant Manager, National Stock Exchange, Delhi, PW-12 Shri Brij Mohan

Mishra, Tax Assistance, Income Tax Department, concluded that the total annual income of the deceased was Rs.5,90,160/- besides bonus and incentives to the tune of Rs.78,801/- making a total of Rs.6,68,961/-. The Tribunal taking into account the judgment of the Supreme Court in ***Rajesh & Ors. vs. Rajbir Singh & Ors., (2013) 9 SCC 54*** added future prospects of 30%. The Tribunal also noted that the deceased had the option of share purchase of the employer and assessed the income from shares at Rs.1,27,623/- per annum on this count. Future prospects were not added to this amount. Hence, the total income was assessed at Rs.9,28,866/- (7,03,754 + 97,489 + 1,27,623). The Tribunal further noted that the deceased had two minor children therefore 1/3rd of the total income was taken towards personal expenses. As the deceased was 43 years of age multiplier of 14 was applied and a total compensation for loss of dependency was worked out to be Rs. 86,69,416/-. Rs.25,000/- was added for love and affection, Rs.10,000/- for loss of estate, Rs.25,000/- towards funeral expenses and Rs.1 lac for loss of consortium. Hence, total compensation of Rs.88,29,416/- was awarded.

18. Learned counsel appearing for the claimant has made three submissions seeking enhancement of the compensation awarded. He firstly submits that the deceased had received 4000 shares of M/s.J.P. Associates as an employee since 2002. He submits that these shares have been received over a period of six years and not 14 years as taken by the Tribunal. Hence, it is urged that instead of adding Rs.1,27,623/- from the income of shares Rs.2,97,787 ought to have been added on account of income from shares. It is secondly urged that the Tribunal has wrongly awarded 30% increase in future prospects. Reliance is placed on the judgment of the Supreme Court in the case of ***New India***

Insurance Company Limited vs. Gopali, AIR 2012 SC 3381 to claim that future prospects @100% should have been added.

19. It is lastly submitted that the compensation for love and affection of Rs.25,000/- is on the lower side and this should have been on the higher side.

20. On the other hand learned counsel for the insurance company has argued that income from shares should not be added to the income of the deceased inasmuch as the shares had been transferred in the name of the claimant. He further submits that no future prospects should be added to the income sought to have been derived from the shares. He has also pointed out that there are no dependants in this case as the husband is also earning and is not dependent upon the wife. Hence 50% of the income has to be deducted towards personal expenditure. He also seeks to challenge the grant of 30% increase in income on account of future prospects.

21. As far as the contentions of the claimant are concerned, in my opinion, there is no merit in the same. There is nothing on record to show that the shares which have been allotted to the deceased were allotted over period of six years as claimed by the claimants.

22. PW-6 Shri T.D.Joshi, AGM, Shares, Jai Prakash Associates had brought the details of the shares allotted to the deceased. He has stated that the face value of the shares of Jai Prakash Industries (now Jai Prakash Associates) is Rs.2/- each but at the time of allotment was Rs.10/- each. He has further said that shares are allotted to employees irrespective of the length of service. He has further pointed out that deceased applied for shares in pursuance of the application and was allotted 700 shares of JPVL, 700 shares of JIL and 1400 shares of GACL. He has further said that he knows nothing about the shares

allotted to the deceased in 2002.

23. PW-7 Shri Sandeep Vasudeva, Assistant Manager, Secretarial, Jai Prakash Associates had brought the original Jaypee Employee Stock Purchase Scheme-2002. He has in his cross-examination said that there is no mandatory provision for the employees regarding allotment of shares and that it was an open scheme for employees on roll of the company and was an option.

24. PW-8 Shri Gautam Gupta, Assistant Manager, National Stock Exchange, Delhi had confirmed in his cross-examination that the price of shares of the market fluctuate on a day to day basis.

25. In the light of the above evidence, in my opinion, there is nothing on record to demonstrate as to over which period of time the shares have been allotted to the deceased. There is nothing to show that the shares were allotted over the period of six years as claimed by the claimants. Accordingly, there is no merit in the said submission of the appellant.

26. Coming to the next two submissions of the claimants, namely, adding future prospects of 100% and increasing the compensation on account of love and affection, in my opinion, there is no merit in the said contention. The Tribunal based on a detailed examination of the evidence on record has assessed the income of the deceased at Rs.5,90,160/-. The Tribunal has added income from perks, shares and future prospects and assessed total income at Rs.9,28,866/- per annum and granted loss of dependency of Rs.86,69,416/-. The compensation awarded is fair, just and reasonable.

27. Coming to the contentions of the insurance company, in my opinion, there is no merit in the said contentions. Firstly, no future prospects have been added to the share income. Secondly, it is true that the husband of the deceased

was not financially dependent on the deceased. However, she has left behind two minor children who would certainly be financially dependent upon the deceased. The Tribunal has rightly deducted 1/3rd of total income towards personal expenses.

28. On future prospects the Tribunal has relied upon the judgment of ***Rajesh & Ors. vs. Rajbir Singh & Ors. (supra)***.

29. Accordingly, there is no reason to interfere in the said Award of the Tribunal. Both the appeals are dismissed.

MAC.APP.No.780/2013 & 781/2013

30. These two appeals arise out of petition No.166/2010 filed on account of injuries sustained by the daughter of Shri Amitava Acharjee, namely, Ms.Anuradha Acharjee. Ms.Anuradha Acharjee suffered fracture of jawbone at three places i.e. fracture mandible parasymphysis, fracture right condyle, fracture dentoalveolar region 21/12. She was operated and her entire teeth were stitched and she had to remain on liquid diet for 6 weeks.

31. Based on the above, the Tribunal awarded the following compensation:-

1.	Pain and sufferings	Rs.80,000/-
2.	Compensation towards dis-figuration of face	Rs.50,000/-
3.	Loss of marriage prospects	Rs.1,00,000/-
4.	Loss of studies of four month	Rs.20,000/-
5.	Special diet and conveyance	Rs.30,000/-
6.	Loss of amenities & enjoyment	Rs.50,000/-
	Total	Rs.3,30,000/-

32. Learned counsel appearing for the claimant states that the claimant had

30% disability in relation to her face and has suffered from face and jaw impairment and bad looks. It is urged that she should have been given compensation for loss of income due to disability. She was of 16 year and studying in class X and was doing well.

33. Learned counsel appearing for the appellant/insurance company states that the disability is a cosmetic disability and is not a functional disability. He submits that there is no functional inconvenience caused to the claimant. Hence, no amount as sought by the claimant is payable.

34. A perusal of the evidence shows that PW 10 Dr.Binod Kalita, Specialist, Orthopaedics, LBS Hospital, Delhi has exhibited the original disability certificate as Ex.PW9/1. He has confirmed that Ms.Anuradha Acharjee suffered permanent disability of 30% in relation to her face.

35. The disability certificate Ex.PW9/1 reads as follows:-

“ After examination of Smt.Anuradha Acharjee the board has come to the conclusion that Smt.Anuradha Acharjee is suffering from Mandible R and she has a permanent physically disability of 30% (thirty percent) in relation to face in case of temporary disability she will require re-evaluation after ... month/year for issuance permanent disability certificate, if any.”

36. PW-9 Ms.Anuradha Acharjee has said in her evidence stated that she is a student of B.A.(Hons.)2nd Year at Maharaja Agrasen College.

37. PW-1 Mr.Amitava Acharjee in his evidence by way of affidavit has stated as follows:-

“As my daughter is in her growing age it was too difficult to remain in complete liquid diet for six weeks and all the diet had to be taken from molar. Even now the risk of deformities in growth from the points of crack cannot be ruled out due to her growing age. Hence, the actual disability can be ascertained only

after treatment is over. Due to the unfortunate accident she had suffered terrible trauma and shock and is still unable to concentrate in her studies. My daughter had to remain under untold pain and suffering apart from the loss sustained to her studies.”

38. The above is the sum and substance of the evidence filed by the claimants to show the functional disability suffered of Ms.Anuradha Acharjee.

39. It is quite clear from the above evidence that the claimants have not been able to show any functional disability suffered by Ms.Anuradha. The Tribunal has rightly awarded no amount for functional disability

40. As no amount has been awarded for functional disability as claimed by the claimant Ms.Anuradha Acharjee the appeal filed by the insurance company being MAC.App.781/2013 is dismissed.

41. However, keeping in view the nature of injuries suffered by a young girl in the accident I increase the compensation for pain and sufferings from Rs.80,000/- to Rs.2 lacs. I also increase the compensation for loss of marriage prospects from Rs.1 lacs to Rs.2 lacs. Similarly for loss of amenities and enjoyment also I increase the sum from Rs.50,000/- to Rs.2 lacs. The total compensation will now read as under:-

1.	Pain and sufferings	Rs.2,00,000/-
2.	Compensation towards dis-figuration of face	Rs.50,000/-
3.	Loss of marriage prospects	Rs.2,00,000/-
4.	Loss of studies of four months	Rs.20,000/-
5.	Special diet and conveyance	Rs.30,000/-
6.	Loss of amenities & enjoyment	Rs.2,00,000/-
	Total	Rs.7,00,000/-

42. The insurance company may deposit the enhanced compensation in Court alongwith interest @9% per annum from the date of filing the claim petition till deposit in Court. Enhanced compensation as awarded in MAC.App.No.774/2013 shall be paid to Mr.Amitava Acharjee. The enhanced compensation in MAC.App.No.780/2013 be paid to Ms.Anuradha Acharjee.

43. Both the appeals stand disposed of accordingly.

44. Statutory amount paid by the Insurance Company in its appeal be refunded to the Company.

45. All interim orders stand vacated.

JAYANT NATH, J

OCTOBER 30, 2014

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