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

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Date of Decision: October 28, 2014

+ MAC.APP. 502/2008

NATIONAL INSURANCE CO. LTD. Appellant
Through Mr.Pradeep Gaur, Advocate.

versus

PRAGYA GHILDIAL & ANR. Respondents
Through Mr.O.P.Manie, Advocate for the
claimant/R-1.

+ MAC.APP. 35/2009

PRAGYA GHILDIAL Appellant
Through Mr.O.P.Manie, Advocate
versus

THE NATIONAL INSURANCE CO.
LTD. & ANR. Respondents
Through Mr.Pradeep Gaur, Advocate for R-1.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. The present two appeals arose out of the Award dated 29.07.2008. It appears that in the first round of litigation before this court appeals were dismissed by this court and the matter has been remanded back by the Supreme Court pursuant to judgment dated 18.10.2012.

2. The brief facts of the case giving rise to the present appeals are that the claimant Pragya Ghildial was travelling on her two wheeler on 02.05.2005. She

was going from her house at Laxmi Nagar towards Vaishali, Ghaziabad. When she reached Coffee Home at Preet Vihar she was hit by a car said to be driven at a high speed rashly and negligently. The claimant fell down and was removed to Deepak Memorial Hospital. As per her contention she is completely paralysed below the stomach. She claims to have been a Yoga Teacher earning Rs.23,500/- per month and that the accident ruined her life.

3. MAC. APP. 502/2008 is filed by the appellant Insurance Company seeking to impugn the Award on the grant of compensation to the claimant. MAC. APP.35/2009 is filed by the claimant seeking enhancement of the compensation awarded by the Tribunal.

4. Based on the evidence on record the Tribunal awarded a total compensation of Rs.20,06,622/- break-up of which is as follows:-

1.	Pain and Sufferings	Rs.75,000/-
2.	Medical Expenses	Rs.3,95,580/-
3.	Attendant charges	Rs.9,000/-
4.	Special Diet	Rs.50,000/-
5.	Loss of income during treatment	Rs.80,000/-
6.	Conveyance	Rs.30,000/-
7.	Loss of income owing to the disability	Rs.8,40,000/- (Rs.80,000 X 17 -1/3)
8.	Future medical expenses	Rs.50,000/-
9.	Loss of marriage prospects	Rs.1,00,000/-
10.	Loss of academic year in education	Rs.1,00,000/-
11.	Expenses on attendant for the life	Rs.3,00,000/-
12.	Expenses on conveyance & loss of amenities in life	Rs.1,00,000/-
13.	Shortening of life span on account of injury	Rs.1,00,000/-
	Total	<u>Rs.22,29,580/-</u>
	(-) 10% of the total award toward negligence	<u>Rs.2,22,958/-</u>
	Compensation payable	<u>Rs.20,06,622/-.</u>

Considering the blameworthiness of the petitioner towards the accident

at 10%, the compensation payable to the claimant was calculated at Rs.20,06,622/-.

5. I will first deal with MAC. APP. 502/2008 filed by the appellant Insurance Company.

6. Learned counsel appearing for the appellant has made two submissions to impugn the Award. He firstly submits that the Tribunal has held it to be a case of contributory negligence holding the extent of liability/negligence of the offending car to be 90% and attributed only 10% of negligence to the claimant. He submits relying upon the site plan that this is incorrect and contributory negligence of 50% should be fastened on the claimant and on the offending vehicle which is insured by the appellant Insurance Company. He secondly submits that the Tribunal has without any evidence on record fixed the physical/functional disability of the claimant at 100% and accordingly awarded Rs.8,40,000/- for loss of income owing to the disability. He submits that the said figure is entirely incorrect and is not in conformity with the evidence on record.

7. A perusal of the Award shows that the Tribunal noted that there is the oral testimony of both the claimant and the driver of the offending vehicle which is contradictory to each other. The Tribunal noted that there is nothing to show that the car was coming from the wrong side. The Tribunal concluded keeping in mind the fact that the accident took place between two vehicles proceeding in opposite directions that the aspect of claimant's negligence cannot be altogether put into oblivion and hence, the Tribunal concluded that some contributory negligence on the part of the claimant could be seen from the site plan and that the claimant ought to have been more careful inasmuch

as she was proceeding towards the main road Vikas Marg and was very near to a major intersection. Hence, the Tribunal assessed the blameworthiness on the part of the claimant at 10%.

8. On the loss of income the Tribunal noted the medical records that the claimant suffered a fracture in the right leg, spinal injuries and paralysis in the lower portion. The Tribunal noted the evidence of PW-2-Orthopedic from RML Hospital who had deposed that the claimant had suffered 100% disability and she met with a traumatic paraplegia. Disability certificate was proved as Ex.PW-2/A. The Tribunal noted that the claimant was a Yoga Instructor which was proved by Ex.PW-1/2 which is a diploma issued by Naturopathy and Yoga Academy, Delhi and vocational certificate issued by National Institute of Open Schooling. The Tribunal also noted that the claimant had completed a course in naturopathy and Yoga from Gujarat Ayurved University which was a diploma. The Tribunal also noted that the claimant had proved her income tax assessment for the year 2005-2006 which shows an income of Rs.1,06,189/-. In cross-examination she had admitted that the return is a single one and filed after the accident. Based on this evidence, the Tribunal concluded that her income would be Rs.80,000/- per annum. The Tribunal also assessed the functional disability at 100%. Accordingly, using the multiplier of 17 the Tribunal deducted 1/3 as expenses that the claimant would have spent on herself and assessed the loss of dependency at Rs.8,40,000/-.

9. The claimant in her statement by way of affidavit has explain her serious nature of injuries as follows:-

“I received the following injuries:-

- i. Fracture right leg, rod has been inserted.
- ii. Spinal injuries.

iii. Lower portion below stomach has been paraylised. Due to the injuries I have become 100% disabled in the accident.”

10. She explained her qualifications in yoga as follows:-

“4. I passed twelfth class in the year 2001. I thereafter did the following courses in Yoga and received certificates in Yoga from them I am a trained Yoga Instructor.

- i. National Institute of open schooling, New Delhi.
- ii. Akhil Bharatiya Prakritik Chikitsa Parishad, New Delhi.
- iii. Nuturopathy and yoga, Academy Babu Nature cure Hospital and yogashram, Gandhi Nidhi, Patparganj, Delhi.
- iv. Vivekananda yoga Mahavidyapeetham, Banglore, Karnataka.

5. I was also studying B.A. through correspondence. I was to appear for B.A. final examination on 6.5.05. As I met with accident on 2.5.05, I could not appear for the examination. My parents are working. Due to the 100% disability I need a nurse to look after me throughout the day.”

11. In her cross-examination she says as follows:-

“These days from 8.30 to 9.30 in the morning, I attend YWCA for a course of Air Ticketing and Fare. At about 11.30, I attend hospital for physiotherapy and I go there in a Taxi with a Nurse. In the evening, I stay at home. I still remember the Yoga knowledge but I am unable to perform the same. Yoga can be taught without demonstrating AASANS. If I do not undergo physiotherapy exercise, my lower limb will jam and there is no improvement. My present age is 24 years old. It is wrong to suggest that I am deposing falsely about the disablement.”

12. Her disability certificate reads as follows:-

“.. is a case of Traumatic paraplegia (#D12, L1) with bladder and bowel involvement. She is physically disabled and has 100% (One Hundred percent) permanent (physical impairment) in relation to his/her whole body.”

13. In the light of the above evidence it is clear that the claimant is unable to carry out her known profession of a yoga teacher. General principles relating to compensation in injury cases were elaborated by the Supreme Court in the case of *Raj Kumar vs. Ajay Kumar and Anr., (2011) 1 SCC 343* in paragraph 10. Relevant portion of which reads as follows:-

“14....For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60 per cent. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100 per cent as in the case of a driver or carpenter, nor 60 per cent which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand....”

14. Keeping in view the nature of disability suffered by the claimant, she obviously cannot teach yoga, the profession she was following. Keeping in view the evidence as above, in my opinion there are no grounds to differ with the findings of the Tribunal assessing the functional disability of the claimant at 100%.

15. Coming to the findings of the Tribunal in relation to contributory negligence, the reasoning of the Tribunal does not appear to be correct. Merely because the claimant was proceeding towards the main road cannot be a ground to assess that she had 10% contribution to the accident in question.

16. A perusal of the site plan shows that it does not throw any light as to how the accident had taken place. In fact the accident had taken place when the scooter was proceeding towards the main road, which is while facing the site plan is almost on the extreme right side corner. That would be the path that the scooter would have normally taken. As the accident has taken place on that side, it is obvious that the car/offending vehicle has strayed off its path and hit the scooter after having gone off its own course i.e. its side of the road. Accordingly, there are no grounds to state that the contribution of the claimants should be 50% towards the accident as has been argued by the appellant.

17. The present appeal is dismissed.

18. The statutory amount, if any, paid by the appellant at the time of filing of the appeal, the same may be refunded to the appellant.

MAC. APP.35/2009.

19. This appeal is filed by the claimant seeking enhancement of compensation. Learned counsel appearing for the claimant has made various submissions in support of his appeal. It is firstly submitted that the Tribunal while assessing loss of income due to disability has wrongly deducted 1/3rd for personal expenses which is a deduction which is not made in the case of an injury. Secondly it is submitted that having assessed the income of the claimant at Rs.80,000/- per annum no increase has been added on account of future prospects. It is thirdly submitted that the deduction of 10% on account of alleged contributory negligence is incorrect and the compensation has been wrongly reduced by 10%. Leaned counsel submits that the driver of the offending vehicle in the criminal case proceedings has voluntarily pleaded guilty of the offence of Section 279/338 IPC. Hence he submits that even

otherwise there are no grounds to attribute any component of negligence on the claimant. It is next submitted that grant of Rs.75,000/- for pain and sufferings is on the lower side. It is lastly submitted that the multiplier should be 18 and not 17 as taken by the Tribunal.

20. As far as deduction of $1/3^{\text{rd}}$ is concerned, reference may be had to the judgment of the Supreme Court in the case of ***Raj Kumar vs. Ajay Kumar and Anr.(supra)*** where it has been clearly held that no deduction has to be made for personal expenditure in the case of injury. Hence, deduction of $1/3^{\text{rd}}$ for personal expenditure is erroneous and is set aside.

21. As far as 10% deduction for contributory negligence is concerned, I have already held that the conclusion of the Tribunal that there was 10% contributory negligence on the part of the claimant is a finding without any basis and contrary to the facts on record. I set aside the said finding and grant full compensation to the claimant inasmuch as no responsibility can be fastened on the claimant for the said accident.

22. There is no dispute that the Tribunal has taken a wrong multiplier of 17 instead of 18.

23. On the issue of future prospects, the Tribunal assessed the income of the claimant at Rs.80,000/- per annum. In view of the judgments of the Supreme Court in the case of ***Rajesh & Ors. vs. Rajbir Singh & Ors., (2013) 9 SCC 54, Smt.Savita vs. Bindar Singh & Ors., (2014) 4 SCC 505*** and ***V.Mekala vs. M.Malathi & Anr., 2014 ACJ 1441***, the assessed income of Rs.80,000/- per annum should be increased by 50% for future prospects for calculation of loss of income due to physical disability.

24. Coming to the last contention regarding the compensation of awarded

towards pain and suffering, keeping in mind the date of the accident as of 2005, there are no grounds to change the award. Award of Rs.75,000/- for pain and suffering as in the said facts and circumstances considering compensation awarded under other heads of the case is fair and reasonable.

25. Total compensation with the above changes would now come to Rs./35,49,580/- as follows:-

1.	Pain and Sufferings	Rs.75,000/-
2.	Medical Expenses	Rs.3,95,580/-
3.	Attendant charges	Rs.9,000/-
4.	Special Diet	Rs.50,000/-
5.	Loss of income during treatment	Rs.80,000/-
6.	Conveyance	Rs.30,000/-
7.	Loss of income owing to the disability (Rs.80,000/- + 50%) x 18	Rs.21,60,000/-
8.	Future medical expenses	Rs.50,000/-
9.	Loss of marriage prospects	Rs.1,00,000/-
10.	Loss of academic year in education	Rs.1,00,000/-
11.	Expenses on attendant for the life	Rs.3,00,000/-
12.	Expenses on conveyance & loss of amenities in life	Rs.1,00,000/-
13.	Shortening of life span on account of injury	Rs.1,00,000/-
	Total	<u>Rs.35,49,580/-</u>

26. The Insurance Company may deposit the additional compensation amount within six weeks from today with pendent lite interest @6% from the date of the filing of the appeal till deposit. On receipt of the amount, 50% of the amount be released to the claimant and balance 50% be kept in a fixed deposit for six years on which the claimant will receive quarterly interest from the bank.

27. The appeal stands disposed of.

JAYANT NATH, J

OCTOBER 28, 2014/rb