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

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Decided on: 18.09.2019

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MAC.APP. 435/2018

ANUBHA VAID

..... Appellant

Through: Mr. Ankur Chhibber, Advocate with
the appellant.

versus

AMAN CHADHA & ORS (BHARTI AXA GERNERAL
INSURANCE CO LTD)

..... Respondents

Through: Ms. Suman Bagga, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

1. This appeal seeks enhancement of the award of compensation dated 05.09.2017 in MACT No. 4590/2016 on the grounds that:

- (i) compensation towards 'loss of future prospects' has not been granted which is otherwise payable in terms of the dicta of the Supreme Court in *National Insurance Co. Ltd. vs. Pranay Sethi & Ors.*, (2017) 16 SCC 680;
- (ii) 'loss of income' during the treatment period has not been granted;
- (iii) a meager compensation of Rs. 30,000/- has been given towards "loss of amenities and enjoyment of life", and only Rs. 50,000/- has been given for "disfigurement";

- (iv) compensation towards “loss of earning capacity and future income” is only Rs. 12,23,984/- on the assessment of 20% “functional disability”, and
- (v) For “attendance and conveyance charges”, only Rs. 30,000/- has been granted and for “pain and suffering”, Rs. 40,000/- has been granted.

2. In effect, the compensation granted to her by the impugned order is as under:-

“33. The total compensation is assessed for injured as under:-

1	Compensation for medical expenses	Rs. 6,000/-
2	Compensation for pain and suffering	Rs. 40,000/-
3	Compensation for attendant charges, special diet & conveyance	Rs. 30,000/-
4	Loss of future earning capacity/future income	Rs. 12,23,984/-
5	Compensation for loss of amenities and enjoyment of life	Rs. 30,000/-
6	Compensation for disfigurement	Rs. 50,000/-
7	Loss of income during treatment	Rs. 1,27,000/-
8	Wheel Chair	Rs. 1,50,000/-
	Total	Rs.16,57,484/-

3. After a day’s work, the appellant-a young lady of 32 years of age was returning home on the evening of July 3rd 2015 at about 8:30 pm. She was

in her I-20 car which was being driven by her driver. En route, when her car reached near Defence Colony Petrol Pump, the vehicle ahead of her, applied its brakes suddenly. Resultantly, the appellant's car also applied its brakes. But the offending Ritz car coming from behind in a rash and negligent manner in a very high speed could not stop itself and crashed into the appellant's car thereby causing her serious and extensive injuries. She was rushed to Fortis Hospital, at Shalimar Bagh, Delhi. She suffered 90% permanent disability apropos her left lower limb. She brought PW-2- Dr. Kailash Nath Jha, Consultant Orthopedic Surgeon, Max Hospital, Delhi as her witness. He had deposed that he was treating the appellant for the last many years. The nature of her injuries were, that she had suffered a fracture of femur shaft a few years ago, which was operated upon and she gained the ability to move about. However, she became about 50% disabled after the said surgery in the sense that she needed some precautionary support of an appliance while walking. He further deposed that the appellant had suffered a re-fracture of the femur and the implant (nail). She was operated upon, the broken implant (nail) was removed and intra-medullary nail and bone grafting with artificial bone was done on her by the said surgeon. She had visited the hospital for regular check up, dressing and post-operative care, so as to obviate any infection in the wound and for best restorative care and support. After the surgery she had become completely bed-ridden. There was a poor bone formation; it took about 6 months for the fractured bone to partially unite; she was not allowed to carry-out any weight bearing activities or even move for her daily needs. Medically, she was allowed to move only on a wheel chair but with the assistance of an attendant. The doctor further deposed that:-

“....After second surgery, the disability has been increased because petitioner is not allowed to put weight and walk independently. Petitioner is now about 80% disabled, however, the functional disability is 100%. Because of increased weight (due to immobility), petitioner is not allowed to put weight on the operator side as the nail used in the operation is very thin and putting weight on the same may cause further damage to the implant which may cause re-fracture and may require further treatment. Prior to the accident, petitioner was very intelligent and mentally strong girl working on her own but post surgery, she has become depressed and is facing certain psychological problems. Presently, she is completely dependent on the attendant for her day-to-day activities. Because of the thin nail, re-fracture may occur in future and she may require further treatment for the same. Good nurturing diet with high protein is required for her early recovery of the fracture side and she may face multiple physical as well medical problems because of immobility as her weight is increasing.”

4. The appellant is an MBA by qualification. She was employed with M/s EGC Global which she left after some time and ventured out as an independent consultant to advise corporate entities. There was a resultant fall in her gross income as a consultant vis-à-vis her assured salary as an employee. It is this lesser amount of annual income that was taken into consideration in the impugned order, as the basis for computation of ‘loss of earnings’.

5. It is contended that in such transitioning years, there is always a likelihood of some dip in revenues, but the same has to be reasonably factored vis-à-vis the competence of the individual to earn at least the previous salary amount. The learned counsel for the appellant refers to the dicta of this Court in ***Subodh Dass vs. Govind & Ors. (Bajaj Allianz Gen. Ins. Co. Ltd.)*** in MAC. APP. No. 118/2015 decided on 28.11.2016, wherein

80% permanent disability of the lower limb of the injured victim was taken to be 80% functional disability apropos whole body. In the present case, the claimant/victim had already suffered 50% disability in the right lower limb in an earlier motor vehicular accident.

6. The present disability of 90% of the left lower limb has made her permanently wheelchair bound i.e. she would require the assistance of a person throughout her life to move about; she would be deprived of the simple pleasures of being able to walk or to enjoy the felicity of free movement by an able-bodied person. Till such time that musculoskeletal devices and better prosthetics are made available such deprivation in free movement would continue. Her left leg was the only limb with which she used to walk, but now even that leg has become non-functional. So she is effectively 100% disabled, apropos both her lower limbs. Therefore, in respect to the whole body, her functional disability should be taken as 90%.

7. As noted hereinabove, although the learned Tribunal assessed her physical disability as 100% apropos both the lower limbs, it assessed her functional disability at merely 20% for the whole body, for the reason that she was already disabled by 50%, apropos the right lower limb. It applied the following formula: $90\% \text{ deducted by } 50\% = 40\%$, this was reduced by 50% apropos the whole body, therefore, only 20% was taken as the functional disability. The Court is of the view that the said rationale is erroneous, because what is to be assessed is the functional disability brought about as a result of the injury. The claimant's existing 50% disability in the lower limbs, has made her left leg the main lower limb, which was in effect, the only limb available to her for her movement. With that leg too having been rendered dysfunctional to the extent of 90%, the assessment would

have to be made on the basis of the resultant dysfunctionality. It may well be argued that the earnings of a corporate consultant are primarily based on the intellectual ability of the individual, thus physical disability may not affect such professional services. However, what is to be noted is that the injured-appellant was a young lady of 32 years of age. She had just started her independent corporate consultancy; it would take her some time to build a clientele and goodwill for herself, before she could be assured of a minimum amount per month. For official meetings, she would need to move from the office of one corporate entity to the other and from one city to the other. However, with her enormous debilitation as noted hereinabove, such movements would be seriously impaired. Her movement to and inside corporate offices, which may or may not be wheel-chair friendly and her entering into a Board Room in a wheel-chair, could also be a constraint in some ways. These and other related factors would adversely affect the growth of her consultancy services to a considerable extent. It would also hinder corporate social interactions. In the circumstances, it would be inexorable and just to assess her functional disability at 90%. It is so done.

8. For computing the “loss of earnings”, the income of the year of the accident was taken into consideration. This is the year the appellant had chosen to venture out as an independent consultant. Earlier she was in an employment and her earnings were much higher. It is to be borne in mind that ordinarily, it takes time for an individual to build a consultancy, but the claimant’s ability to earn the earlier remuneration while in employment stands proven. Therefore, it would be fair to take the aggregate of her annual earnings of the previous three years, for the calculation of ‘loss of

earnings’. The ITRs with the annual assessment of the years 2013-14, 2014-15 and 2015-16 (page nos. 369, 370 and 371 of the LCR) were:

ITR Assessment Year	Gross Income	Net Income	Tax Payable
2013-14	Rs.5,48,747/-	Rs.4,42,760/-	Rs. 26,057/-
2014-15	Rs. 7,64,506/-	Rs. 6,12,330/-	Rs. 57,644/-
2015-16	Rs. 3,87,277/-	Rs. 3,16,280/-	Rs. 4,782/-
Total (Rs. 13,71,370/- ÷ 3)		Rs. 4,57,124/-	

9. The aggregate annual income of Rs. 4,57,124/-, is taken as her annual income, on which she is entitled to and is accorded 40% towards ‘loss of future prospects’ in terms of *National Insurance Co. Ltd. vs. Pranay Sethi & Ors.*, (2017) 16 SCC 680.

10. Furthermore, the young lady of 32 years, with both of her lower limbs becoming permanently disabled, would be severely and irreparably disadvantaged from active social life, resulting in perpetual personal grief and suppression of dreams and aspirations. Apropos debilitations suffered in the extreme by a young person, the Supreme Court in *Parminder Singh vs. New India Assurance Co. Ltd. & Ors.*, 2019 SCC OnLine SC 802, has held as under:

“5.8. The Appellant was produced before us. He was in an extremely pitiable state. On account of the removal of the frontal bone of the skull, half of his head has caved in. Furthermore, a deep circular incision was made in his throat, and his body was in an unstable condition, undergoing tremors. The Appellant is further suffering

from hemiplegia, due to which the left side of his body is not functioning properly.

5.9. Given the debilitated state of the Appellant, no amount of money can compensate him. He has been in this condition since the age of 22 years when the accident took place, and will remain like this throughout his life. The Appellant has also been deprived of having a normal married life with a family, and would require medical assistance from time to time. Being completely dependant, he would require the help of an attendant throughout his life. In view of these uncontroverted facts, we deem it fit and appropriate to award a lump sum amount of Rs. 10,00,000/- to the Appellant towards medical expenses and attendant charges.”

11. The appellant has come to the Court today. She is on a wheelchair. She evidently cannot move out of it without assistance. With her sole functional lower limb having become defunct, the spectre of life-long dependency for even simple movements within the house, let alone in public; the permanent deprivation of the natural felicity of participating in and living a normal life or moving about in society, without being noticed for one's disability can be daunting and stressful. Her marital prospects and her ability to raise a family would be severely affected. In the circumstances, the compensation for “pain and suffering” is enhanced to Rs. 3,50,000/- and compensation for ‘loss of amenities’ is also enhanced to Rs. 3,50,000/-. For disfigurement, she is granted Rs. 8,00,000/-

12. Presently, her parents and her sole brother may be able to take care of her but with change in circumstances she may be all by herself, therefore, she would require an attendant round the clock for her lifetime. Hence, attendant charges should be payable at the rate of minimum wages payable

to a semi-skilled person. Let the insurer pay the appellant throughout her life the minimum monthly wages of a semi-skilled person, for her to avail such services.

13. In terms of the above, the amount payable by the insurance company shall be as under:

S.No.	Particulars	Amount
1.	Loss of Earnings [Rs. 4,57,124 x 90% disability = Rs. 4,11,412 x 16 (multiplier) x 140/100 (40% loss of future prospects)]	Rs. 92,15,629/-
2.	Attendant Charges (to be payable for lifetime of injured) [Rs. 15,400 (minimum wages applicable to a semi-skilled worker) x 12 (months)]	Rs. 1,84,800/-
3.	Pain and suffering	Rs. 3,50,000/-
4.	Loss of amenities	Rs. 3,50,000/-
5.	Disfigurement	Rs. 8,00,000/-
TOTAL		Rs. 1,09,00,429/-

14. The appellant has come to the Court in the wheelchair. She is obviously not in a position to move about by herself, she needs assistance. However, the spirit of just compensation would warrant that her movement is optimized and for this objective she should be provided with all reasonable contraptions and aid. Her optimal movement needs to be ensured. She submits that the wheelchair supplied by the insurance company does not facilitate her optimal movement. She seeks the provision of a better mechanized wheelchair and has suggested Ottobock B Series of the latest model. Let the same be provided to her by the insurance company. The

appellant shall visit the supplier and indicate her preference to the insurance company. The payment for the chosen motorized wheelchair shall be made to the supplier directly by the insurer. The wheelchair shall be provided to the appellant before 18.10.2019 in terms of the preference indicated by her.

15. The enhanced amount shall be deposited by the respondent-insurance company within three weeks of receipt of copy of this order alongwith interest at the same rate and from the same date as specified in the impugned award. Upon deposit, the said monies shall be released to the beneficiary of the award in terms of scheme of disbursement specified therein.

16. The appeal is disposed-off in the above terms.

NAJMI WAZIRI, J

SEPTEMBER 18, 2019/AB

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