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

Date of decision: 23rd April, 2015

+ **MAC.APP. 593/2011**

NEW INDIA ASSURANCE CO. LTD.

..... Appellant

Through: Mr. K.L. Nandwani, Advocate

versus

POORNANAND & ORS.

..... Respondents

Through: Mr. S.N. Parashar, Advocate for
Respondent no.1.

**CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL**

G. P. MITTAL, J. (ORAL)

1. The appeal is for reduction of compensation of Rs.31,92,587/- awarded by the Motor Accident Claims Tribunal (the Claims Tribunal) in favour of Respondent no.1 along with interest @ 7.5% from the date of filing of the claim petition *i.e.* 01.03.2008.
2. The Claims Tribunal awarded the compensation which is extracted hereunder:

Sl. No.	Compensation under various Heads	Awarded by the Claims Tribunal (in Rs.)
1.	Treatment Expenses	43,939/-
2.	Pain & Suffering	2,00,000/-
3.	Loss of Earning	17,42,976/-
4.	Loss of Income	3,24,672/-
5.	Diet & Conveyance	80,000/-
6.	Attendant Charges	10,20,000/-
	TOTAL	34,11,587/-

3. The following contentions are raised on behalf of the Appellant Insurance Company:

- (i) Respondent no.1 was granted loss of income for 38 months amounting to Rs.3,24,672/-. At the same time, he was also granted loss of earning capacity on a multiplier of 17. It is stated that the same amounts to duplication of the award; and
- (ii) The compensation awarded towards attendant charges to the extent of Rs.10,20,000/- is on the higher side.

4. On the other hand, the learned counsel for Respondent no.1 states that the compensation awarded is very conservative considering the nature

of injuries suffered which are depicted from the testimonies of CW-1, Dr. N. Laisram, Senior Specialist. It is urged that Respondent no.1 was entitled to a higher compensation.

5. In the motor vehicular accident which occurred on 13.01.2008, Respondent no.1 suffered traumatic paraplegia with fracture D12 vertebra with neurogenic bladder and bowel. The condition and disability suffered by Respondent no.1 is depicted in the testimonies of CW-1. His statements were recorded on 06.09.2012 and then again on 20.09.2012. The examination and cross-examination recorded on 20.09.2012 is extracted hereunder:

“At this stage, disability certificate No.2-21/11-MR, dated 02.08.2011 issued by Disability Board of Doctors of PMR Department, Safdarjung Hospital of Poornand is shown to the witness, it bears my signature at point ‘X’. The same is exhibited as Ex.CW1/A(OSR). It also bears the signatures of Dr. Rajender Sharma and Dr. Ajay Gupta also. As per disability certificate, the injured Poornand suffered 100% disability in respect of both lower limbs. This disability certificate is issued after a period of 3 years after detailed and thorough examination by the members of Disability Board comprising of myself. The patient has suffered traumatic paraplegia with fracture D-12 vertebra with neurogenic bladder and bowel. I am of the considered view that since there have been no improvement in his condition and there is no chance of improvement in his condition in future. Injured Poornand will not be able to walk or to do any other work involving use of both lower limbs in future. In such kind of case the quality of life is compromised as it depends generally on the integration of

the patient with his family and community. In such kind of cases family support is very important as the patient requires great care and attention.

xxx Ms. Manu, counsel for insurance company

It is correct that on Ex.CW1/A it is mentioned that the document is not meant for medico legal cases, however, I say that we have only one format and we do not have any other format for issuance of any disability certificate. Whenever, the certificate is to be issued, it is the same format and it depends on the parties to use it in pursuance of their requirements. I have not treated the patient Poornand, however, I have assessed him qua the disability. Vol. Prior to issuing the certificate, patient is examined on the parameters provided in the guidelines. The certificate Ex.CW1/A was issued after review which was carried out after 3 years after the first assessment involving both lower limbs. I cannot state exact about the loss of his functional loss of ability as I have not examined him afresh. However, as he came on his own to deliver the summons to me at hospital on wheel chair by himself, I am of the view that he can perform work with his upper body and has reasonable span of balancing himself for sitting purposes.”

6. From the testimony of CW-1, it is evident that the disability suffered by Respondent no.1 was to such an extent that he had no control over his lower limbs which even involved bladder and bowel. In view of this, the Claims Tribunal's finding assessing 100% loss of earning capacity cannot be said to be unjustified and irrational. In *Rattan Lal Mehta v. Rajinder Kapoor & Anr.*, 1996 ACJ 372, it was laid down that while awarding loss of earning capacity on account of disability,

the Tribunals and the Courts must first assess the loss of earning of income up to the last date of Trial and then the compensation towards loss of earning capacity on multiplier basis. Thus, grant of loss of income for 38 months and then loss of future earning capacity on applying a reasonable multiplier cannot be faulted. But, at the same time, adding of 38 months after the accident, Respondent no.1 would be aged more than 31 years and the appropriate multiplier thus, will be 16 instead of 17. The loss of future earning capacity in view of this will come to Rs.16,40,448/-(Rs.8,544/- x 12 x 16).

7. As far as award of attendant charges is concerned, it was assessed @ Rs.5,000/- for hiring attendant on a multiplier of 17. In para 19 of the impugned judgment, the Claims Tribunal observed as under:

“19. The petitioner is shown to have undergone Traumatic Paraplegia with fracture D-12 Vertebra with Neurogenic, bladder and bowel, in view of which he would have negligible or almost no chance of recovery. It is also shown from the medical documents that he has almost no chance of movement and is completely bed-ridden. He is advised to even be careful of bed sores. In view of above, it can be expected that he shall need attendant to take care of him due to his immobility. In view of the Minimum Wages Act, the expenses of hiring attendant are assessed @ Rs.5,000/- and having regard to this condition, the annual expenses for attendant are assessed as Rs.5,000/- x 12 =Rs.60,000/-. In view of permanent nature of disability, it is viewed that the petitioner would need attendant all through his life and hence, the attendant's charges are multiplied with 17 which

multiplier is adopted for the petitioner expecting his life expectancy and in view of guidelines in Sarla Verma Versus DTC.”

8. Thus, taking into account the nature of injuries suffered, Respondent no.1 will be dependent on some attendant throughout his life. In case of *Delhi Transport Corporation and Anr. v. Lalita*, AIR 1981 Delhi 558, a Division Bench of this Court held that a victim cannot be deprived of compensation towards gratuitous services rendered by some family members for the benefit of the tortfeasor. The award of compensation on a multiplier of 17 towards attendant charges thus, cannot be faulted.
9. Therefore, there is an excess of compensation of Rs.1,02,528/-. Respondent no.1 will need conveyance even in future to consult a doctor or attend social function. Hence, I award an additional sum of Rs.1,02,528/- towards conveyance charges.
10. Consequently, the award of compensation of Rs.34,11,587 cannot be said to be excessive or exorbitant.
11. The appeal therefore, has to fail; the same is accordingly dismissed.
12. Pending applications also stand disposed of.
13. At the time of admission of the appeal, 30% of the award amount was

ordered to be released to Respondent no.1. The Claims Tribunal further ordered release of remaining 70% of the award amount in installments of 10% over a period for seven years. In fact, Respondent no.1 is to be looked after for his entire life. It is therefore, directed that 10% of the balance amount shall be released after two, four, six, eight, ten and twelve years from the date of this order. Respondent no.1 shall be further entitled to draw quarterly interest on the amount held in Fixed Deposit, if he so desires.

14. Statutory amount, if any, deposited shall be released to the Appellant Insurance Company.

(G.P. MITTAL)
JUDGE

APRIL 23, 2015
pst