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

Date of Decision: 26.05.2016

\+ MAC.APP. 421/2007

BABY MAHIMA TANEJA ..... Appellant

Through: Mr. Vipul Srivastav and Mr. R. Vats, Advocates

versus

NATIONAL INSURANCE CO. LTD. ..... Respondent

Through

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. The appellant, then aged 7 years, was travelling with other members of her family on a motor cycle on 13.05.2005 when there was a collision involving a motor vehicle described as tempo bearing registration no.DL-1LE-3439 (offending vehicle), admittedly insured against third party risk for the period in question with the second respondent herein (insurer). Accident claim cases, including on behalf of the appellant (suit no.72/2006), were filed which were clubbed and subjected to inquiry leading to judgment dated 27.02.2007 of the Motor Accident Claims Tribunal (tribunal), upholding the

case that the accident had occurred resulting in injuries due to negligent driving of the offending vehicle.

2. In the case of the appellant, the tribunal awarded compensation in the sum of ₹3,96,563/- with interest at the rate of 6% p.a. from the date of institution of the case (which is 28.11.2005) till realization. The said amount was inclusive of ₹1,36,563/- towards medical expenses, ₹1 Lakh towards future medical expenses, ₹50,000/- towards pain and suffering, ₹20,000/- towards special diet, ₹10,000/- towards conveyance expenses, ₹10,000/- towards loss of amenities during the period of recuperation and ₹50,000/- as lump-sum compensation towards disability besides ₹20,000/- towards loss of marriage prospects.

3. The claimant has come up with this appeal, *inter alia*, submitting that the award towards medical expenses, as granted by the tribunal, was inadequate. The claimant also seeks enhancement of the award towards loss of amenities pointing out that the disability suffered by her is permanent in nature.

4. During the pendency of the appeal, it was submitted on behalf of the appellant that the entire medical expenses could not be proved before the tribunal and that post the decision on the claim petition by the tribunal, further expenditure had been incurred. Certain bills and receipts were submitted on record and the insurance company was called upon to verify. By order dated 03.12.2015, the insurance company was directed to make further payment of ₹1,73,445/- towards medical expenses subsequently incurred. It is fairly conceded by the counsel for the claimant / appellant that the insurer has complied with the said direction and the amount of

₹1,73,445/- towards subsequent medical expenditure has since been paid / received.

5. The appeal is pressed for enhancement of the award on account of future medical expenses increase in the award under the head of loss of amenities and disability, and compensation for discomfort of parents besides the rate of interest.

6. On the request of the appellant, she was allowed to lead further evidence, availing which she has examined herself as AW-1, also examining Dr. R.S. Vashishta (AW-2). The evidence of both the said witnesses collectively shows that as a result of the injuries suffered, the right foot and ankle of the claimant has become severely deformed, crooked and short. Though she has undergone a number of reconstructive surgeries for repair of the said defects, the deformity has been resurfacing due to growth by age. AW-2 has advised two further surgical procedures for de-bulking of the flap and lengthening of the hind foot. It appears, medical advice had been received in 2014 for surgical procedures but the same could not availed by the appellant since she was pre-occupied with her end of school examination. AW-2 has now given a fresh advice and assessment for the expenditure required in the sum of ₹3,50,000/- to ₹4,00,000/-, besides which there would be need for further post-operative medical expenditure in the range of ₹30,000/- to ₹40,000/- which procedures are expected to bring normalcy not more than 70- 80%.

7. It is noted that the tribunal had included in the award ₹1 Lakh towards future medical expenses. Having regard to the evidence of AW-2, an amount of ₹3,50,000/- is added towards future medical expenses.

8. Reliance is placed by the claimant on *Master Mallikarjun Vs. Divisional Manager, the National Insurance Co. Ltd., & Anr., (2014) 14 SCC 396* and *Kumari Kiran Vs. Sajjan Singh & Ors. (2015) 1 SCC 539*. This court had the occasion to deal with another similarly placed case – *MACA 345/2011, National Insurance Company Ltd. Vs. Baby Heena & Ors.*, decided on 14.03.2016. Having regard to the view taken in the aforementioned cases, the permanent disability of the claimant having been assessed to the extent of 20%, an amount of ₹3 Lakh deserve to be awarded on account of disability; this, in addition to the actual expenditure of treatment and besides the compensation for discomfort, inconvenience and loss of earnings to the parents during the period of treatment.

9. Following the view taken in the aforementioned cases, compensation on account of disability is increased from ₹50,000/- as awarded by the tribunal to ₹3 Lakh and an amount of ₹25,000/- is added as compensation for discomfort, inconvenience and loss of earnings to the parents during the period of treatment.

10. Having regard to the nature of injuries and their permanent effect on the quality of life of the claimant, loss of amenities of life is to be taken care of not only for the period of recuperation but also for the entire remaining life. In these circumstances, the award under the said head is increased to ₹50,000/-.

11. In the result, the compensation stands increased by (₹3,50,000/- + ₹ 2,50,000/- + ₹ 40,000/- + ₹25,000/-) ₹6,65,000/-.

12. Following the consistent view taken by this Court, the rate of interest is increased to 9% per annum from the date of filing of the petition till realization. [see judgment dated 22.02.2016 in MAC.APP. 165/2011 *Oriental Insurance Co Ltd v. Sangeeta Devi & Ors*.].

13. Needless to add, while computing the payment required to be made, the amounts already paid and received shall be suitably adjusted.

14. The award is modified accordingly. The insurer is directed to pay the effect of the enhanced award, inclusive on account of increased rate of interest, by requisite deposit with the tribunal within 30 days whereupon it shall be released to the claimant in the form of four equally divided fixed deposit receipts in her name in a nationalized bank of her choice for a period of 10 years. As and when the claimant requires immediate finance for purposes of her further treatment, or education, or settlement in life, she will have the liberty to approach the tribunal for pre-mature release from such fixed deposits to the extent necessary.

15. The appeal is disposed of in above terms.

(R.K. GAUBA)
JUDGE

MAY 26, 2016
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