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

*Decided on: 31<sup>st</sup> July, 2017*

+ **MAC APPEAL No. 48/2009**

**SHREYA GOEL**

..... Appellant

Through: Mr. Rakesh Tikku, Sr. Adv. with  
Ms. Arpan Wadhawan, Adv.

versus

**MUKESH KUMAR & ORS.**

..... Respondents

Through: Mr. P. Acharya, Adv. for R-3.

**CORAM:**

**HON'BLE MR. JUSTICE R.K.GAUBA**

**JUDGMENT (ORAL)**

1. The appellant (claimant) then 9 years old, was travelling in motor vehicle make Indica bearing registration no. DL 7C A 2877, driven by her father Rakesh Goel, on 01.06.2002, with certain other persons, when it met with an accident involving another motor vehicle, it being a jeep bearing registration no. HR 02 H 9914, which was admittedly insured against third party risk covering the period in question with the third respondent (insurer). A number of claim petitions were filed including for and on behalf of the appellant (it being MACT 211/04/03) instituted on 14.07.2003. All the said claim petitions were clubbed together and inquiry held by the motor accident claims Tribunal (Tribunal), it culminating into judgment dated 01.10.2008, returning a finding that the accident had occurred on account of negligent driving of both the vehicles, the responsibility being equally apportioned.

2. The Tribunal upheld the claim of compensation for and on behalf of the appellant and assessed it in lumpsum amount of Rs. 6 lakhs but considering the “blameworthiness” of the driver, directed the amount of Rs. 3 lakhs only to be paid, this with interest @ 7.5% per annum, the responsibility to pay having been fastened on the insurer.

3. The present appeal was filed questioning the method of calculation of compensation by the Tribunal and seeking enhancement. It has been pointed out that the claimant had suffered extensive injuries including grievous ones which required prolonged treatment and surgical procedures, the injuries having resulted in loss of some teeth as also disfigurement which has necessitated continued treatment inclusive for plastic surgery. It was pointed out that the Tribunal did not embark upon the necessary exercise of making the assessment for compensation on account of loss of studies which resulted in the academic career and gainful employment of the appellant being pushed back by a year.

4. During the pendency of the appeal, on application being moved to such effect, the appellant was allowed opportunity to lead additional evidence. In exercise of the said right, she examined herself (AW-1). In addition, she has also examined Mr. Dharnandra N. Gonageri (AW-2) an official of Sri Dharmasthala Manjunatheshwara, College of Medical Sciences & Hospital, Manjushri Nagar, Sattur, Dharwad - 110009 where she had undergone surgical procedure for removal of the scar. The respondents have not led any evidence in rebuttal.

5. Having heard the learned senior counsel for the appellant and the counsel appearing for the third respondent and having perused the record, including the evidence led before the Tribunal, this Court finds that the Tribunal fell in error by not undertaking a proper exercise of making an assessment of the loss incurred by the appellant or in construing the effect the injuries suffered by her have had on her life. The evidence on record shows that, as a result of the accident, the bones in the forehead and root of the nose had got fractured. Initial management was conservative treatment but as a result of the internal damage the appellant developed pyogenic meningitis and septicemia (CR 692527) and this required treatment as indoor patient sometime in July, 2002. The diagnostic procedures undertaken around that time showed fracture of right ethmoid, right maxillary sinus and floor of the right orbit besides cortical break in the cribriform plate on the right side with herniation of brain parenchyma into ethmoid cells (Ex.PW-1/27). The said damage was repaired surgically. The treatment continued in Indraprastha Apollo Hospital, the appellant having developed post traumatic faciomaxillary bone deformities (Ex.PW-1/32) for which there was a medical advice for re-constructive surgical corrections. The assessment made at that stage (14.11.2003) was that surgical procedure would be in three stages, each such procedure likely to require expenditure in the sum of Rs. 1.5 lakhs, the total expenditure being in the region of 4.5 to 5 lakhs.

6. While the appeal remain pending, the evidence shows, the appellant was taken by her parents for the necessary surgical

intervention, this resulting in expenditure computed at Rs. 1,99,869 (Ex.AW-1/1 to Ex.AW-1/5, collectively). The evidence adduced before the Tribunal about the prolonged surgical procedures requiring corrections for the deformity, which is quite palpable, required to be factored in while making the award on account of medical expenditure. In this view, this Court is of the opinion that the award made by the Tribunal requires modification. Medical expenditure assessed in the total sum of Rs. 5 lakhs deserves to be added, this taking care of expenditure already incurred as well as to be incurred in future follow up treatment.

7. The tribunal noted that the accident had occurred on 01.06.2002. The appellant at that point of time was 9 years old. The medical treatment record that her studies would have been pushed back by at least a year, as is claimed. She is present in Court and, on being asked, fairly conceded that she had completed her graduation in 2014, having attained the degree of Bachelor of Arts in political science. Thereafter, she went on to pursue a diploma course in Public Relations and Corporate Communication and having successfully completed the said course, is now gainfully employed. Be that as it may, it is clear from the chronology of events that her settlement in gainful employment has suffered from delay. Therefore, the loss of income corresponding to one year, on the minimum wages available to a graduate during that period, would be the correct benchmark for added compensation under that head. This is computed as (10218 x 12) Rs. 1,22,616/-.

8. The non-pecuniary damages under the components of pain & suffering and loss of amenities of life (and disfigurement) on one hand and towards loss of marriage prospects deserve to be added. Having regard to the nature of injuries suffered, amount of Rs. 1 lakh each under the heads of loss of amenities of life (and disfigurement) and loss of marriage prospects and Rs. 1,50,000/- towards pain and suffering are added. The total compensation in the case, thus, comes to (5,00,000+1,22,616 + 1,50,000 + 1,00,000+ 1,00,000) Rs. 9,72,616/- rounded off to Rs. 9,73,000/-.

9. Having regard to the fact that the claimant was a passenger in the car, her claim cannot be affected by the element of contributory negligence, even if it was on part of her father. Therefore, the direction of the tribunal for deduction on that account to the extent of fifty per cent (50%) is set aside.

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

11. The award is modified accordingly.

12. The third respondent insurance company shall satisfy the award by requisite deposit with the tribunal within 30 days.

**R.K.GAUBA, J.**

**JULY 31, 2017/nk**