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

\+ MAC.APP. 104/2017 & CM Nos. 3760/2017 & 4753/2017

THE NEW INDIA ASSURANCE CO LTD ..... Appellant
Through: Mr. J.P.N. Shahi, Adv.

versus

NIKKY PHOOL & ORS ..... Respondents
Through: Mr. S.N. Parashar, Adv. for R-1.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 23.05.2017

1. The motor accident resulted in causing 90% physical disability to respondent no.1. The Tribunal has awarded an amount of Rs. 25.60 lakhs as compensation with interest at the rate of 9% per annum. In default of payment of the awarded amount within 90 days of the award the interest at the rate of 12% was payable. The impugned Award had two components: Rs. 19.85 lakhs was granted towards loss of earning capacity and the remaining amount was towards non-pecuniary damages. Although the claimant had sought compensation towards loss of earning capacity of Rs. 12,000/- per month as a scrap dealer, but in the absence of any proof of income, minimum wages of Rs. 9,178/- per month was accepted by the Tribunal and the computation of the pecuniary compensation was calculated at Rs. 1,10,136/- per annum. The respondent no.1 suffered amputation of the right leg above the knee and in fourth toe of the left leg, he has been permanently incapacitated; hence, the Tribunal considered his functional disability as 100%. The age of the injured being 16 years, a multiplier of 18

was applied and computation for loss of earning capacity of Rs. 19.85 lakhs was arrived at.

2. The appellant has impugned the above computation on the ground that in ***Master Mallikarjun vs Divisional Manager, The National Insurance Co.*** Civil Appeal No. 7139/2013 decided on 26.08.2013, the Supreme Court held as under:

> *"..... 12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick. In the instant case, the disability is to the tune of 18%. Appellant had a longer period of hospitalization for about two months causing also inconvenience and loss of earning to the parents. The appellant, hence, would be entitled to get the compensation as follows: -*

Head	*Compensation amount*
Pain and suffering already undergone and to be suffered in future, mental and physical shock, hardship, inconvenience, and discomforts, etc., and loss of amenities in life on account of permanent disability	*Rs. 3,00,000/-*
Discomfort, inconvenience and loss of earnings to the parents during the period of	*Rs, 25,000/-*

hospitalization.	
Medical and incidental expenses during the period of hospitalization for 58 days.	*Rs. 25,000/-*
Future medical expenses for correction of t he mal union of fracture and incidental expenses for such treatment	*Rs. 25,000/-*
Total	*Rs. 3,75,000/-*

3. Relying on the ***Master Mallikarjun*** (supra) the appellant contends that the compensation amount should be limited to Rs. 6 lakhs.

4. The Court would note that the aforesaid case was in relation to the compensation apropos a 12 year old while the present case concerns a 16 year old who was working as a scrap dealer and his vocation has been irreversibly hindered because of the irreparable permanent disability suffered by him. Therefore, the cases are distinguishable on facts. The appellant also argues that the Tribunal's finding of 100% functional disability is erroneous; instead it should have been 45%; that the injured still had his other three limbs i.e. his two hands and other leg to be able to perform his work, therefore, he cannot be said to be entirely functionally disabled.

5. The Court notices that a person would ordinarily be able to move about if he is so equipped to. In the present case there is no Award towards fitment of a prosthetic which would enable the injured to move about and resume, if at all and to the extent possible, his earlier vocation of a scrap dealer. Therefore, to say that the functional disability is not 100%, is untenable. The Court has to see how the injury has affected the earning capacity of the injured person. Since his functional disability is 100% the

compensation awarded is a natural corollary. It is just. Additionally, the Court would take into account that in ***Municipal Corporation of Delhi vs. Association of Victims of Uphaar Tragedy (2011) 14 SCC 481***, the Supreme Court had awarded a minimum amount of Rs. 10 lakhs to victims above 20 years and Rs. 7.5 lakhs to those below 20 years.

6. In MAC.APP.No.981/2015 titled: ***The Oriental Insurance Co. Ltd. v. Suman & Ors.*** decided on 9th August, 2016 while dealing with a similar case this Court held:

> "4. The Claims Tribunal has taken the minimum wages of Rs.3,589.90 and after adding 50% towards the future prospects, the total income of the deceased has been taken as Rs.5,384.85 (Rs.3589.90 + Rs.1,794.95). This Court is of the view that the occupation of the deceased as a professional driver having been sufficiently proved, the income of the deceased can be safely presumed as Rs.5,384.85 per month even if future prospects are not awarded. It is not mandatory to resort the minimum wages in each and every case. Reference in this regard may be made to the judgment of the Supreme Court in ***Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy***, AIR 2012 SC 100 in which 59 persons died in Uphaar tragedy and the Supreme Court granted compensation of Rs.10,00,000/- to the victims of above 20 years of age and Rs.7,50,000/- to the victims below 20 years of age on the basis of multiplier method. The Supreme Court applied the multiplier of 15 and deducted 1/3rd towards the personal expenses. The income of the victims aged more than 20 years was assumed to be Rs.8,333/- per month and that of victims aged less than 20 years was assumed to be Rs.6,249/- per month. The computation of the compensation awarded by the Supreme Court would be as under :-
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> For victims aged more than 20 years:-

(Rs.8,333/- less 1/3rd)x 12 x 15 = Rs.10 lakhs.

For victims aged less than 20 years:-
(Rs.6249/- less 1/3rd) x 15 = Rs.7.5 lakhs.

5. It is relevant to note that the Uphaar tragedy took place on 13th June, 1997 and the minimum wages at the relevant time were less than Rs.2600/-. Although there was no proof of the income of the victims, the Supreme Court did not find it proper to apply the minimum wages.

6. This Court has applied the principles laid down in *Uphaar tragedy* case to compute the compensation in ***United India Insurance Co. V. Kanwar Lal,*** 2012 SCC Online Del 2411, ***New India Assurance Co. Ltd. v. Bal Kishan Pawar,*** 2012 SCC Online Del 3201, ***National Insurance Co. Ltd. v. Chander Dutt,*** 2012 SCC Online Del 2412, ***National Insurance Co. Ltd. v. Sewa Ram,*** 2012 SCC Online Del 2413 and ***National Insurance Co. Ltd. v. Komal***, 2014 ACJ 1540, ***National Insurance Co. Ltd. v. Gaje Singh,*** 2012 ACJ 2346 and ***National Insurance Co. Ltd. v. Bhateri***, 2012 SCC Online Del 2409.

7. Applying the principles laid down in Uphaar tragedy case, the income of the deceased is presumed to be Rs.5,384.85...."

7. The ***Uphaar*** (supra) judgment was delivered on 13.10.2011. It dealt with an accident that happened in 1998, when minimum wages were Rs. 1937/- per month.

8. In the present case the accident happened about 18 years later in 2015, when minimum wages applicable to an unskilled worker were Rs. 9,174 per month, therefore, on that principle there could be a corresponding four-fold increase in the compensation, but this route is not being preferred. Instead a

conservative view has been adopted by the Tribunal. The Court is of the view that the amount taken into consideration by the Tribunal is the least it could have considered. There is no reason to interfere with the same.

9. Accordingly, the appeal and the applications are dismissed.

CM No. 19711/2017 (cross-objection by respondent no.1)

10. Issue notice.

11. Mr. J.P.N. Shahi accepts notice for the appellant.

12. The cross-objections be numbered and registered as a separate appeal.

13. List on 22.08.2017.

NAJMI WAZIRI, J

MAY 23, 2017/kk