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

+ **MAC.APP. 181/2017 & CM No.7531/2017**

HDFC ERGO GENERAL INSURANCE CO LTD. Appellant
Through: Mr. A.K. Soni, Advocate.

Versus

VIKASH & ORS. Respondents
Through: Mr. S.N. Parashar, Advocate for
Respondent No.1.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER
% **22.05.2017**

1. The appeal impugns the Award on the ground that instead of the usual 9%, the rate of interest has been granted at 12%. The Court finds substance in the contention raised keeping in mind the judgement of the Supreme Court in the case of ***Asha Verman and Ors. Vs. Maharaj Singh and Ors.*** (2015) 11 SCC 389, which held as under:

Further, the High Court has erred in awarding an interest at the rate of 8% per annum only, instead of 9% per annum on the compensation amount as per the principles laid by this Court in the case of Municipal Corporation of Delhi v. Association of Victims of Uphaar Tragedy (2011) 14 SCC 481. We accordingly award an interest at the rate of 9% per annum on the compensation amount. We accordingly award an interest at the rate of 9% per annum on the compensation amount.

2. The other ground of challenge is that although respondent No.1/injured was still an undergraduate student at the time of the accident,

the minimum wages applicable to a graduate were taken into consideration while computing the loss of earning capacity. The Tribunal reasoned as under:-

*“20. The petitioner was allegedly working as Accountant and earning Rs. 15,000/- per month. He was a student of Final year at the time of accident. He was a regular student. There is nothing on the record that he was working as Accountant with any particular firm or shop. His testimony that he was working as Accountant does not inspire confidence. The educational documents show that he was a student of final year at the time of accident. He has completed graduation after the accident. There is no income and employment proof on record. He is entitled for minimum wages of a graduate. He was residing in Delhi. He is entitled for minimum wages for graduate. The minimum wages for graduate worker in NCT of Delhi on the day of accident were Rs.10218/- per month. The said amount is taken as income of the petitioner. The accident has taken place on 23.05.2013. The date of birth of petitioner is shown as 07.01.1994 in the Aadhar card Ex.PW-1/1. No other age proof is placed on record. The age recorded in Aadhar card is taken as age of petitioner. He was 19 years old on the date of accident. There is no evidence with respect to the future good prospects so petitioner is not entitled for compensation qua future prospects. Reliance is placed upon MAC App. No. 79/2014 and 413/2015 titled as **"Bharti Axa General Ins. Co. Ltd. Vs Poonam and ors."** decided on 27.05.2015 by Hon'ble Mr. Justice G.P. Mittal of our own High Court. The loss of future income due to disability is calculated by multiplying the annual income of the petitioner with the percentage of disability and multiplier. The multiplier of 18 is applicable. Support is drawn from **"Sarla Verma vs DTC" 2009 ACJ 1298**. The annual income of the petitioner comes to Rs.1,22,616/- p.a. The loss of future earning on account of disability comes to Rs.11,03,544/-(Rs. 1,22,616 x 18 x 0.50). The petitioner is entitled for a sum of Rs. 10,13,688/- on account of loss of future income due to permanent disability.”*

3. The Court has to see that the compensation awarded in such cases is just and realistic. In *Nagappa v. Gurudayal Singh & Ors. (2003) 2 SCC 274*, the Supreme Court held that there is no restriction on the Court that compensation should be awarded only up to the amount claimed by the claimant, the only embargo being that it should be 'just' compensation, which is reasonable on the basis of evidence produced on record. In industrial law, minimum wages are the basic wages that must be paid to skilled and unskilled workers and are taken in the absence of other evidence on record to award fair and reasonable compensation. That being said, there is nothing that precludes the Court from enhancing compensation over and above the minimum wages in the circumstances of the case.

4. In the present case, the respondent No.1 was pursuing his final year to obtain a B.Com degree. Although respondent No.1 had claimed that he was working as an Accountant and was earning Rs.15,000/- per month, in the absence of any proof in this regard, the said amount was not accepted. Instead the minimum wages were deemed appropriate. The said respondent has now completed his graduation. The Court deems it appropriate that minimum wages applicable to a graduate be accepted. It is so ordered.

5. The awarded amount alongwith interest at the rate of 9% per annum shall be released to the beneficiary in terms of the Award. The statutory deposit shall be refunded to the appellant.

6. The appeal alongwith pending application stands disposed off in the above terms.

NAJMI WAZIRI, J.

MAY 22, 2017/sb