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

% *Decided on: 16.12.2019*

\+ MAC.APP. 29/2019 & CM APPL. 407/2019

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD

..... Appellant

versus

MUKESH KUMAR THAKUR & ORS ..... Respondents

\+ MAC.APP. 903/2019, CM APPL. 51186/2019, CM APPL. 51187/2019 & CM APPL. 51188/2019

MUKESH KUMAR THAKUR ..... Appellant

versus

BAJAJ ALLIANZ GENERAL INSURANCE CO LTD & ORS

..... Respondents

Through: Mr. Pankaj Gupta, Advocate for Ms. Suman Bagga, Advocate for insurance company.

Mr. Pawan Kumar Jakhu, Advocate for claimant alongwith claimant.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. These appeals impugn the award of compensation dated 26.09.2018 passed by the learned MACT in Suit No. 25/16 (Old No. 5/14).

2. MAC.APP. 29/2019 impugns the award on the ground that compensation granted on the basis of the third Disability Certificate is erroneous. This issue has been dealt with in the impugned order as under:-

> *"19. According to certificate Ex.PW1/7, the petitioner was admitted in 'Multispeciality Hospital and Trauma centre', Pathankot on 02.01.2013 as case of road traffic accident (RTA). On examination, he was found to have sustained crush injuries on 'left leg and knee'. He was discharged on 03.01.2013.*
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> *20. As noted in MLC Ex.PW3/A, the petitioner was admitted at 09.52 p.m. on 03.01.2013 in 'Jai Prakash Narayan Apex Trauma Center, AIIMS, New Delhi' with history of road traffic accident (RTA) at 11.30 p.m. on 01.01.2013. He was examined to have suffered 'multiple abrasions on both legs, bruise on right thigh, laceration (large, sutured) in left leg, right little toe, 2nd toe and right middle finger of hand and abrasion on left hand'. As per discharge summary Ex.PW3/B, he received treatment as an indoor patient from 04.01.2013 to 23.01.2013. He was diagnosed to have suffered 'lacerated wound over left leg and fracture left proximal tibia'. He underwent debridement and external fixator was applied. He was re-admitted on 08.05.2013 and discharged on 22.05.2013. He was diagnosed as a case of 'non-union proximal tibia left with malunited lateral Hoffa fracture ipsi-lateral side'. He underwent 'freshening of edges and in situ fixation of Hoffa's fracture and fixation on 16.05.2013'. He was again admitted on 05.10.2013 with the aforesaid complication. He was discharged on the same day.*
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> *21. Initially, the petitioner was examined by the medical board constituted at Lal Bahadur Shastri Hospital, Khichripur, Delhi-110091. He was assessed to have suffered permanent physical disability to the extent of 29% in relation to left lower limb on account of 'fracture proximal tibia with Hoffa's fracture right' vide disability certificate Ex.PW2/A. The medical board constituted at GTB Hospital assessed permanent physical disability of the*

petitioner to the extent of 62% in relation to left lower limb vide disability certificate Ex.PW4/A. In view of the conflicting reports regarding assessment of the extent of disability of the petitioner, he was referred to AIIMS for evaluation of the extent of disability. The medical board constituted at JPNATC AIIMS assessed the locomotor disability of the petitioner to the extent of 63% in relation to left lower limb vide disability certificate Ex.PW5/A.

22. The petitioner cannot squat, sit cross-leg, kneel. He would have difficulty in running. He can walk. However, he would have trouble in climbing and running. There is restrictive range of motion and loss of muscle power at knee and hip of left leg. There is 4% shortening of left lower limb. It is, therefore, evident that the disability suffered by the petitioner would effect his efficiency, quality of life and performance of daily activities involving left lower limb.

23. In view of nature of injury, prolonged treatment, nature of surgical interventions and permanent locomotor disability in relation to left lower limb, the petitioner is awarded compensation in the sum of Rs. 2,00,000/- each under the head of 'pain and suffering' and 'loss of amenities'."

3. What emanates from the above is that the injury caused to the claimant was examined by three government hospitals. Firstly, by Lal Bahadur Shastri Hospital, Delhi, then by GTB Hospital, Delhi and lastly by AIIMS, New Delhi. The third assessment was deemed necessary in view of the conflicting reports of Dr. Brijesh Jain- PW-2, Specialist (Orthopedics), LBS Hospital, Khichripur, Delhi, who deposed that except squatting, cross legged sitting and strenuous activity, the injured could do all routine activities; while Dr. Nikhil Verma-PW-4, Sr. Resident, Department of Orthopedics, GTB Hospital, Delhi, had deposed that the injured was unable to sit cross legged and squat but he could climb and run with difficulty. However, Dr. Adarsh Kumar, Professor (Forensic Medicine/Chairman,

Disability Medical Board), AIIMS, Delhi, opined that the injured has restricted range of movement and loss of power at knee and hip of left leg. He further deposed that the injured cannot squat or sit cross legged or kneel; that he can walk and climb stairs partially; that the injured would have no difficulty in performing a job while sitting on chair but his mobility would be affected.

4. The Court is of the view that the third assessment was done many months later after the first and second assessment. The last medical opinion was closest to the physical condition of the injured for assessment of his functional disability for grant of compensation. There is no reason to doubt it. The assessment of 63% permanent disability was in terms of the last medical opinion, as per parameters laid down for such assessment.

5. The appellant argues that the computation of income, made on the basis of ITR after deductions, is erroneous. In this regard, the impugned order has reasoned as under:-

> *"27. The petitioner relied on income tax return for the assessment year 2013-14 Ex.PW1/5 to prove that his gross annual income was Rs. 2,77,478/-. However, perusal of the said return would show that it was filed on 11.10.2013 after 9 months from the date of the accident. It includes an amount of Rs. 1,08,000/- as rental income. It further includes Rs. 48,550/- as agricultural income. The petitioner would continue to receive the rent of the property. Such income cannot be affected by any injury or unavailability of the petitioner. The petitioner has not specified as to how he was deprived from the agricultural income. The petitioner received an amount of Rs. 19,479/- on account of interest. Therefore, the income of the petitioner from his avocation would come around Rs. 1,00,000/- per annum. The date of birth of the petitioner is wrongly mentioned as '21.09.1984' in the income tax return instead of '14.06.1980'. He has not summoned the record from income tax department to*

formally prove his income tax return. It is, therefore, evident that the income tax return for the assessment year 2013-14 Ex.PW1/5 was filed on 11.10.2013 in order to create evidence of income of the petitioner to the extent of Rs. 2,77,478/- per month. The tribunal cannot place reliance on such document to assess income of the petitioner."

6. Clearly from the aforesaid, an amount of Rs. 1,08,000/- as rental income and Rs. 48,550/- as agricultural income is unsustained and cannot be taken into consideration. Furthermore, the income of Rs. 1 lac is also not proved as to how this computation is applicable to the claimant. It is undisputed that the claimant holds a graduate degree. In the circumstance, minimum wages applicable to a graduate, at the relevant time i.e. Rs. 9,594/- per month, was rightly taken into consideration for computation of loss of earning.

7. Since the appellant-insurance company has partially succeeded in the appeal, the statutory amount, alongwith interest accrued thereon, be returned to it.

8. The appeal stands disposed-off in the above terms.

9. MAC.APP. 903/2019 seeks enhancement of the award of compensation on ground that 30% functional disability considered by the learned Tribunal is on the lesser side as it is virtually impossible for the injured to move about at ease and/or climb stairs. It would affect his work which he may do such as visiting to his clients in offices for his consultancy vocation and/or continuing with his agricultural vocation. In the latter line of work, the disability would be much more, whereas for his consultancy it would be an impediment in his movement from one office to other.

10. For the reasons mentioned in para 4 hereinabove, the functional disability is enhanced from 30% to 50%.

11. The claimant also seeks enhancement of compensation towards 'compensation for deformity'. Photographs of the deformity have been annexed with the appeal. Looking at the condition of the injured, compensation under this head is enhanced from Rs. 2 lacs to Rs. 3.50 lacs.

12. Accordingly, the amount payable to the claimant is as under:-

S.No.	Particulars	Amount
1.	Loss of future income [Rs.9,594/- (minimum wages) x 12 (months) x 16 (multiplier) x 140/100 (loss of future prospects) x 50/100 (functional disability)]	Rs. 12,89,434/-
2.	Compensation for deformity	Rs. 3,50,000/-
TOTAL		Rs. 16,39,434/-

13. Let the aforesaid amount, alongwith interest thereon @ 9% from the date of the filing of the claim petition till its realization, be deposited by the insurer, within three weeks from the date of receipt of copy of this order, to be released to the beneficiary(ies) of the Award in terms of the scheme of disbursement specified therein.

14. The appellant/injured is present in Court and states that almost seven years have gone by since the accident on 01.01.2013; that he has received very little monies. In the circumstance, of the awarded amount, three transactions of Rs. 1.5 lacs each shall be released directly into the bank account of the claimant, being A/c No. 27520100010629, IFSC Code: BARB0MAYVIH, Bank of Baroda, Mayur Vihar Phase-1, Delhi.

15. The appeal stands disposed-off in the above terms.

NAJMI WAZIRI, J

DECEMBER 16, 2019/ RW