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

% *Decided on: 21.11.2019*

+ MAC.APP. 70/2018 & CM APPL. 2219/2018,2221/2018
CHOLAMANDALAM MS GENERAL INSURANCE CO LTD

... Appellant

Through: Mr. Pankaj Gupta, Adv.

versus

ROHIT SINGH (MINOR) THR HIS FATHER & ORS ... Respondents

Through: Respondent no. 1 in person.

Mr. B.K. Roy, Adv.

+ MAC.APP. 300/2019

ROHIT SINGH (MINOR) THR HIS FATHER & ORS..... Appellants

Through: Mr. B.K. Roy, Adv.

versus

CHOLAMANDALAM MS GENERAL INSURANCE CO LTD

..... Respondents

Through: Mr. Pankaj Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The insurance company impugns the award of compensation dated 14.09.2017 passed by the learned MACT in MACP No. 1450/16, on the ground that it has erroneously granted an addition of 50% towards "loss of future prospects", whereas the same ought to be 40%, in terms of the dicta of the Supreme Court in *National Insurance Co. Ltd. v. Pranay Sethi & Ors.* (2017) 16 SCC 680, because the injured was a minor at the time of the motor vehicular accident which occurred on 28.10.2012. The learned

counsel for the respondents/injured concedes to the same. Accordingly, the addition towards "loss of future prospects" shall be @ 40% and not 50%.

2. The insurer contends that the learned Tribunal assessed the notional income of the injured/minor as Rs. 15,000/- per annum on the basis of the principle laid down by this Court in *Chetan Malhotra vs. Lala Ram* 2016 SCC OnLine Del 2981, for computing compensation towards "loss of future earnings".

3. The impugned order has assessed the functional disability of the injured/minor at 17% vis-a-vis his whole body disability of 33%. The same is on the lesser side because the victim has suffered traumatic stiffness of the right ankle which would unnecessarily affect his gait and his ability, as an injured/minor, to walk long distances. In this regard it has held as under:

"16. As per disability certificate the (sic) Master Rohit Singh had suffered severe and grievous head injuries and other parts of the body and suffered 33% Permanent Disability.

17. For the purpose of assessing the functional disability of the injured following factors shall have to be taken into consideration:-

- a) Extent of disability.*
- b) Portion of the body affected by the accident.*
- c) Nature of job/ work performed by the Injured*
- d) Whether disability has affected his work.*
- e) If likely to improve in future or not.*
- f) Possibility of alternative employment.*

18. It could be seen that because of the injury Master Sampee Yadav must (sic) head injury, left sided hemiplegia and fracture proximal left humerus and suffered 50% Permanent disemporary (sic) Disability. At the same time he must be having substantial power on his both lower limb to do some work. It cannot be said that because of the injury he can not perform any work.

20. Keeping in view the settled principal law and in view of disability certificate wherein the Board of Doctors have filed permanent disability of injured at 33%, in facts of the case the injured is taken as having 17% permanent bodily functional disability.”

4. Because of the nature of extent of his injury the injured/minor would not be able to play freely as he did prior to such incapacitation. The feet are amongst the most vital limbs of the human body as the entire body weight rests on the feet. If the feet or the legs are compromised, it would lead to manifold problems and difficulties to the injured/victim. The importance of the legs in human life can never be under-estimated. Deprivation on account of such incapacitation is all-the-more acute for a minor. In the circumstances, looking at the nature of the permanent disability, the functional disability of the injured is enhanced to 30%. Accordingly, the compensation towards "loss of future earnings" shall be Rs. 4,09,500/- [Rs. 15,000/- (notional income) x 15 (multiplier) x 140/100 (loss of future prospects) x 130/100 (30% functional disability)]. The aforesaid amount shall be paid at the same rate of interest as fixed by the impugned order.

5. The other amounts shall remain undisturbed.

6. The learned counsel for the appellant states that amounts deposited by the appellant are in excess to the aforesaid amount. Should it be so, the same

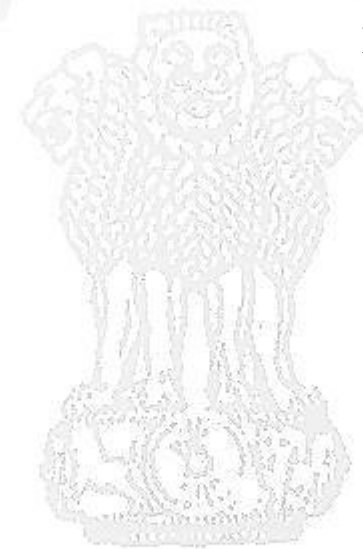
shall be returned to the appellant alongwith interest accrued thereon, as well as the statutory amount, alongwith corresponding interest accrued thereon.

7. The amount deposited by the appellant shall be released to the beneficiary(ies) of the Award in terms of the scheme of disbursement specified therein.

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

NOVEMBER 21, 2019
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NAJMI WAZIRI, J



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