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

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Decided on: 29.08.2019

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MAC.APP. 332/2019 & CM No.10372/2019

ORIENTAL INSURANCE CO LTD.

..... Appellant

Through: Mr. R. K. Tripathi, Advocate.

Versus

MASTER AARAV BHARGAVA & ORS.

..... Respondents

Through: Mr. Bhupesh Narula, Advocate for
Respondent No.1.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The appellant impugns the award of compensation dated 15.12.2018 passed by the learned MACT in MACT No. 356707/2016 on the ground that against a whole body disability of 68%, 100% functional disability has been computed and even otherwise, the quantum of the Award is on the higher side.

2. The aforesaid arguments are refuted by the learned counsel for the injured-victim/respondent no.1. He submits that in fact the compensation granted is on the lower side, it should be enhanced and no case is made out for its reduction. He relies upon the judgment of the Supreme Court in ***R. K. Malik and Anr. vs. Kiran Pal and Ors.***, (2009) 14 SCC 1, wherein the

compensation apropos 'loss of future prospects' has been granted to a minor. The relevant para of the aforesaid judgment reads as under:-

“34. In view of the discussion made hereinbefore, it is quite clear that the claim with regard to future prospects should have been addressed by the courts below. While considering such claims, child's performance in school, the reputation of the school, etc. might be taken into consideration.

35. In the present case, records show that the children were good in studies and studying in a reasonably good school. Naturally, their future prospects would be presumed to be good and bright. Since they were children, there is no yardstick to measure the loss of future prospects of these children. But as already noted, they were performing well in studies, natural consequence supposed to be a bright future.

36. In Lata Wadhwa [(2001) 8 SCC 197] and M.S. Grewal [(2001) 8 SCC 151 : 2001 SCC (Cri) 1426] the Supreme Court recognised such future prospects as the basis and factor to be considered. Therefore, denying compensation towards future prospects seems to be unjustified. Keeping this in background, the facts and circumstances of the present case, and following the decision in Lata Wadhwa [(2001) 8 SCC 197] and M.S. Grewal [(2001) 8 SCC 151 : 2001 SCC (Cri) 1426] , we deem it appropriate to grant compensation of Rs 75,000 (which is roughly half of the amount given on account of pecuniary damages) as compensation for the future prospects of the children, to be paid to each claimant within one month of the date of this decision. We would like to clarify that this amount i.e. Rs 75,000 is over and above what has been awarded by the High Court.”

3. The said argument is further supported by the decision of the Supreme Court in ***Parminder Singh vs. New India Assurance Co. Ltd. & Ors.***, 2019 SCC OnLine SC 802.

4. The respondent further submits that the degree of permanent injury can be gauged from the mere fact that the injured-victim, who is 9 years old, has been yet again re-admitted to Class I as compared to his classmates who are about 4 year olds, the accident has affected his mental faculties. The child is also unable to manage his physical needs on a daily basis without assistance.

5. In the circumstances, there is no justification to reduce the compensation awarded. On the contrary, the said amount shall be enhanced.

6. In view of the above, the victim-injured is entitled to an addition of 50%. Hence, the compensation granted on account of 'Loss of earning capacity due to disability/Loss of amenities of life on account of permanent disability', for 'Pain and Suffering' and for 'Loss of Marriage Prospects' are enhanced to Rs.6,00,000/-, Rs. 1,50,000/- and Rs.1,50,000/- respectively, totaling to Rs.9,00,000/-, consolidated enhancement of Rs. 3,00,000/-.

7. Additionally, since a special diet would be required for the rest of his life, the amount awarded on this ground is enhanced to Rs.75,000/-.

8. Let a fresh computation be furnished by the insurer to the injured-claimant within three weeks of receipt of copy of this order. The excess amount alongwith interest accrued thereon, as specified in the Award, shall be deposited before the learned MACT within the said period for disbursement to the beneficiary of the Award in terms of the scheme of disbursement as specified therein.

9. The amount of Rs.7,35,000/-, which is to be reimbursed on medical expenses, shall be released, alongwith interest accrued thereon, to the

beneficiary of the Award. The remaining amounts deposited shall be released to the beneficiary of the Award in terms of the scheme of disbursement specified therein.

10. The statutory deposit of Rs.25,000/-, alongwith interest accrued thereon, shall be refunded to the insurance company.

11. The appeal, alongwith pending application, stands disposed-off in the above terms.

12. A copy of this order be given *dasti* to the learned counsel for the parties under signature of the Court Master.

NAJMI WAZIRI, J.

AUGUST 29, 2019

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