$~24 & 26

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

% *Decided on: 10.10.2019*

\+ MAC.APP. 390/2019 & CM APPL. 13144/2019

THE NATIONAL INSURANCE CO LTD ..... Appellant

versus

SANDEEP & ORS ..... Respondents

\+ MAC.APP. 483/2019

SANDEEP ..... Appellant

versus

NATIONAL INSURANCE CO LTD & ORS ..... Respondents

Through: Mr. J.P.N. Shahi, Advocate for insurance company.
Mr. Puneet Varshney, Advocate for R-1 in item 24 and for appellant in item 26.
Mr. Sanjay Khanna and Ms. Pragya Bhushan, Advocates for R-2 & R-3 in item 26.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J. (Oral)

1. The aforesaid two appeals are against the award of compensation dated 14.01.2019 passed by the learned MACT in MAC Petition No. 393/17. The insurer seeks reduction of the quantum of compensation while the claimant seeks enhancement of the same. The head-on collision between

two motorcycles resulted in the claimant's loss of one eye. It is the insurer's case that the head-on collision was on account of drunken driving by the injured. The MLC itself records that there was smell of alcohol in his breath, however, the extent of alcohol in his blood was not examined. Therefore, it could not be established that it was a case of drunken driving or that he was necessarily at fault in the accident.

2. According to the DAR, the rider of the offending motorcycle was under the influence of the alcohol. This issue has been dealt with in the impugned order as under:

> *"36. Now, the question which arises for determination is as to which of the respondents is liable to pay the compensation amount. Respondent no. 3/insurance company did not adduce any evidence since it had no statutory defence. At this juncture, it may be noted that although insurance company took plea in its reply that respondent no. 1 was under the influence of liquor at the time of accident but no evidence has been led by it to substantiate the said plea. Counsel for insurance company although made feeble attempt to show that R1 was under the influence of liquor by referring to clause 29 of DAR but said argument is totally misconceived inasmuchas insurance company neither filed copy of MLC if any of R1 on record nor it examined R1 or the concerned doctor who prepared his MLC, during the course of inquiry. Hence, it is held that the insurance company failed to establish said plea. It is nowhere the case of insurance company that any term or condition of insurance policy was breached/violated by insured. Keeping in view the existence of valid insurance policy, respondent no. 3/insurance company becomes liable to pay the compensation amount, as insurance company is*

liable to indemnify the insured. Issue no. 2 is decided accordingly."

3. In effect, there are counter allegations of both the motorcyclists being under the influence of liquor. However, there is no evidence in support of the allegations, therefore, it cannot be presumed that either of them was under the influence of alcohol. There is no conclusive evidence as to what was the percentage of alcohol in blood or whether such percentage was beyond the permissible limits. The injured claimant has been awarded an amount of Rs. 12,11,112/- towards 'loss of future income' on the basis that his loss of one eye would be deemed to be 100% functional disability. The impugned order has dealt with the issue as under:

> *"31. The disability certificate of injured would reveal that he had suffered 46% permanent disability including 30% visual disability. There is no reason to ignore the said document even if it has not been proved by claimant during the course of inquiry for the simple reason that his disability was got assessed as per directions issued by this Claims Tribunal and no evidence in rebuttal has been led by either of the respondents so as to create any doubt on the authenticity of the said certificate.*
>
> *32. The petitioner has failed to specify the exact nature of his avocation performed by him at the time of accident. However, he is shown to have suffered physical impairment in the form of visual disability of 30% in his right eye. Thus, it would not be possible for him to engage himself in any kind of avocation, as it necessarily requires his eye vision to be proper in order to perform his work. Not only this, he would also have difficulty in travelling from one place to another or to perform his day to day activities having sustained the aforesaid kind of physical impairment. Keeping in view the overall facts and circumstances of the case including the nature of injuries sustained by*

petitioner and his nature of work at the time of accident, his functional disability is taken as 30% with regard to whole body."

4. It is the insurer's contention that the 46% permanent disability, including 30% visual disability should be taken as 23% with respect to the whole body.

5. The Court is unable to agree with the said contention because visual disability is the most severe disability to any human being. Nature has provided us two eyes so that an individual can have the best perspective, at least, at 180 degrees ahead of her/him. The loss of one eye would reduce the visibility to a very large extent, in effect the visual field of one side would to a great degree be void forever. Thus, limiting the functional disability of the injured to a much higher degree than the mere visual disability/constraint. The extent of the permanent physical disability of the claimant is recorded in the disability certificate as under:

"(A) He/she is a case of Multiple Disability. His/Her extent of permanent physical impairment/disability has been evaluated as per guidelines (to be specifed) for the disabilities ticked below and shown against the relevant disability in the table below:

S.No.	*Disability*	*Affected Body Part*	*Diagnosis*	*Permanent Physical Impairment/mental disability (in %)*
1.	*Locomotor disability*	@		
2.	*Low Vision*	#		*30 % Visual*
3.	*Blindness*	*Both Eyes*		
4.	*Hearing*	£		

	Impairment			
5.	*Mental Retardation*	*X*		
6.	*Mental Illness*	*X*		
7.	*Maxillofacial*		*Dearrayed Occlusion*	*24%*

B. In the light of the above, his/her over all permanent physical impairment as per guidelines (to be specified) is as follows
In figures: 46 percent, in words: Forty Six percent."

6. The Court would note that the claimant has suffered Maxillofacial Dearrayed Occlusion. In simple terms what it means is that the facial muscles and the appearance are so adversely affected that the mandibular motion becomes irregular i.e. the person has difficulty in chewing food and/or in speaking or carrying out normal functions of the mouth. The occlusion is often skeletal and may or may not affect the muscles of mastication. It also leads to abnormal facial form, muscular impairment and resultant deformity of the face. That being the position, not only will the claimant's functional disability be more than mere 30% of his visual disability but his employability and social life too would be affected largely because of the manner in which his jaw and facial muscles, ordinarily move. He would have difficulty in chewing and doing regular essential functions of his body. The post traumatic appearance of the injured is as under:

7. In the circumstances, there is no reason to interfere with the degree of functional disability as fixed by the learned Tribunal. The Court would note that the amount granted towards loss of marriage prospects is Rs. 1,00,000/-. However, in view of the fact that the injured was merely 20 years of age at the time of the accident and had a whole life of promise ahead of him, but now his social life and prospective married life, would also be affected to a significant degree. The nature of his injury affects his (i) 'loss of general amenities' and (ii) 'enjoyment of life' as well as his 'marriage prospects'. Accordingly, the same are enhanced from (i) Rs. 1,50,000/- and (ii) Rs. 1,00,000/- respectively to (i) Rs. 2,50,000/- and (ii) Rs. 5,00,000/- respectively.

8. The enhanced amount of Rs. 5,00,000/-, alongwith interest @ 9% from the date of filing of the claim petition till its realization, be deposited before the learned Tribunal within three weeks of 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.

9. The statutory amount will be adjusted towards the amount payable by the appellant towards the enhanced amount.

10. The appeals are disposed off in the above terms.

NAJMI WAZIRI, J

OCTOBER 10, 2019

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