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

*Date of decision:*28.07.2023

+ **MAC.APP. 555/2019 & CM APPL. 47495/2022**

THE ORIENTAL INSURANCE CO LTD Appellant

Through: Mr.Pankaj Seth, Adv.

versus

STEPHEN ABLE & ORS Respondents

Through: Mr.Surjeet Singh & Mr.M.K. Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This appeal has been filed by the appellant challenging the Award dated 30.01.2019 (hereinafter referred to as the 'Impugned Award') passed by the learned Motor Accidents Claims Tribunal, South District, Saket Courts, New Delhi (hereinafter referred to as the 'Tribunal') in Petition No. 75448/2016 titled *Stephen Able v. Rajesh Kumar @ Raju and Ors.*

2. The first challenge of the appellant to the Impugned Award is on account of the compensation awarded to the respondent no.1 by the Impugned Award under the heads of "pain and sufferings and enjoyment of life"; "loss of earning (future income) inconvenience, hardships, disappointment, frustration, mental stress, dejection and unhappiness in future life etc."; and "loss of amenities". The learned counsel for the appellant submits that for the same cause, compensation has

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been awarded multiple times over under different heads. He submits that the above three heads are, in fact, overlapping in nature, and the compensation could not have been awarded on all the three heads simultaneously.

3. On the other hand, the learned counsel for the respondent no.1 submits that the respondent no.1 in the present case has been found to have suffered 80% permanent physical impairment in relation to his left lower limb, with the limb above knee having been amputated. He submits that the compensation awarded cannot be said to be unreasonable so as to warrant any interference from this Court.

4. I am in agreement with the submission made by the learned counsel for the respondent no.1. In the present case, the respondent no.1 was diagnosed with "*Schatzker Type 6 Tibial Plate Fracture Left side*". He remained hospitalised from 08.09.2015 to 28.09.2015 in the Trauma Center, AIIMS. He was again hospitalised in the Indian Spinal Injuries Centre from 06.09.2016 to 12.09.2016, 06.11.2016 to 13.11.2016, and 17.11.2016 to 23.11.2016. His permanent disability has been assessed as 80% in relation to his left lower limb, with the limb above knee having been amputated. Taking into account the nature of the injury suffered and the age of the respondent no.1, the amount awarded by the learned Tribunal cannot be said to be unreasonable. Merely because the learned Tribunal sought to divide this compensation into various heads, does not make the total compensation awarded to the respondent no.1 unreasonable.



5. The next challenge of the appellant is on the Award towards “compensation for artificial limb”. The learned counsel for the appellant submits that the respondent no.1 has not yet got the artificial limb and, therefore, the award of compensation on this head is not justified.

6. I am unable to agree with the submission made by the learned counsel for the appellant. The impugned Award directed that out of the awarded amount, an amount of Rs.15,60,000/- shall be payable by the appellant directly to the Indian Spinal Injuries Center, Vasant Kunj, as and when the respondent no. 1 herein gets the artificial limb fixed. Therefore, the impugned Award safeguarded the interest of the appellant and also ensured that the said amount will not be payable to the respondent no. 1, but directly to the hospital on the respondent no.1 getting the artificial limb. No fault can, therefore, be found with the Impugned Award on this ground.

7. However, after the filing of the appeal, certain developments have taken place, which need a mention.

8. By an *ad interim* order dated 14.05.2019, this Court had directed as under:-

“In view of the above, the appellant shall deposit the awarded amount alongwith interest accrued thereon before the learned Tribunal within three weeks. Proof of deposit shall be filed in this Court on or before the next date of hearing. Upon deposit of the amount, Rs.29 lacs shall be released to the beneficiaries of the Award, in terms of the scheme of disbursement specified therein. The remaining amount shall be kept in an interest bearing FDR to be renewed automatically and shall be subject to the orders of this Court.”



9. By the subsequent order dated 02.08.2019, this Court, while directing the appellant to deposit the amount of Rs.15,60,000/- with the Indian Spinal Injury Centre, Vasant Kunj, New Delhi in terms of the Impugned Award, further observed that the said amount would be used towards the treatment/fitment of prosthetic on the respondent no.1, as specified in the Impugned Award. This Court, however, clarified that such deposit would not necessarily mean that the respondent no.1 would be bound to obtain treatment only from the said hospital. I may quote the order as under:-

“The applicant seeks clarification of the order dated 14.05.2019 which had stayed the award subject to deposit of the monies within three weeks. The said three weeks have long expired but the monies have not been deposited. Now, the applicant seeks clarification as to whether Rs. 15,60,000/- should be deposited directly into the account of the Indian Spinal Injuries Center, Vasant Kunj, New Delhi, or should it be deposited before this Court. The Court is of the view that there is no occasion to seek clarification because the monies should have been deposited in terms of the impugned award itself. The Court would further note that the impugned award was passed on 20.01.2019. More than six months have gone by and the appellants have not deposited the money thus far. Rs. 15,60,000/- was to be deposited with the aforementioned Centre for future treatment of and/or fitment of a prosthetic on the injured - respondent no.1. While, the appellant may have raised any number of issues in this appeal, the fact that respondent no.1 has suffered permanent disability and would require a prosthetic for life, the award of and direction to deposit the said monies could not possibly be disputed. Therefore, let the said monies, alongwith interest accrued thereon, be deposited with the



Indian Spinal Injuries Center, Vasant Kunj, New Delhi, within one week from receipt of copy of this order. As mentioned in the impugned order, the said amount shall be kept by the said Centre in an FDR in the name of Mr. Stephen Able, son of Mr. Earnest Able, R/o H. No. B- 209, Upper Ground Floor, KH-830, Chattarpur Extension, New Delhi-110074, and would be used towards his treatment/fitment, as specified in the impugned order, so that his rehabilitation person to the optimum is not impeded in any manner. It is clarified that the deposit of the said monies before the Indian Spinal Injuries Center, Vasant Kunj, New Delhi, would not necessarily mean that the injured would be bound to obtain treatment only from the said Centre.

(Emphasis supplied)

10. On 15.03.2023, this Court directed release of Rs.17,48,988/- lying deposited with ICICI Bank. The relevant extract from the order is as under:

“3. This is an application filed by respondent no. 1 seeking release of a further amount of Rs.4,15,470/- and of Rs. 12,02,284/- from the amount of Rs. 29,00,000/- deposited by the appellant towards the awarded amount. It is the applicant's ease that he has already incurred an expenditure of Rs.4,15,470/- towards his ongoing medical treatment and requires a further sum of Rs. 12,02,284/- towards the estimated cost of a prosthetic limb, which he urgently requires to purchase from the Institute of Spinal Injuries.

4. A reply opposing the application has been filed by the appellant wherein except stating that a sum Rs. 29,00,000/- already stands released in favour of the respondent no. 1, nothing material has been averred regarding the correctness of the grounds on which release of the amounts is being sought by him.

5. In the light of this submission of the appellant that a sum of Rs.29,00,000/- already stood released in favour of respondent no.1,



the ICICI Bank, where the sum of Rs. 29,00,000/- had been deposited by the appellant, was directed to file an affidavit with respect to the amount lying with the bank. The said affidavit has been filed; from a bare perusal of the said affidavit, it is evident that the stand taken by the appellant that a sum of Rs. 29,00,000/- already stood released in favour of respondent no.1 is incorrect. The ICICI Bank has clearly stated that a sum of Rs.5,54,165/- is lying in FDR no. 054710004728 and sum of Rs. 17,48,988/- is lying in FDR no. 054710004729 with a lien having been marked on the two FDRs. 6. In the light of the aforesaid, especially taking into account that the appellant is mainly aggrieved by the quantum of compensation awarded by the learned Tribunal, I am of the view that the respondent no. 1's prayer for release of a sum of Rs.4,15,470/- and Rs. 12,02,284/- deserves to be allowed. The application is accordingly allowed by directing the General Manager ICICI Bank, ISIC Branch, Vasant Kunj, New Delhi to remit the sum of Rs. 17,48,988/- lying in FDR no. 054710004729, along with accrued interest thereon, in the respondent no.1's Bank account. The details of the respondent no.1's bank account will be furnished to Mr. Vikas Tomar, learned counsel for the ICICI Bank on his mobile no. 9958002005 and his Emaililpcfiip.co.in."

11. In compliance with the above order, amount has been released to the respondent no. 1.

12. The learned counsel for the appellant submits that some amount is yet to be released in terms of the Impugned Award. He submits that it is only when the amount is released that the respondent no.1 can have the artificial limb fixed.

13. In view of the *interim* orders passed by this Court, while I find no merit in the submission made by the learned counsel for the appellant in challenge to the impugned Award, it is directed



that the further amount lying deposited with the ICICI Bank Vasant Kunj Branch shall be released to the respondent no. 1 on the respondent no. 1 filing of an affidavit of undertaking with the appellant that the respondent no.1 shall, within three months of the release of the amount, submit with the appellant the proof of having the artificial limb fixed and the cost thereof.

14. I may herein note that the learned counsel for the respondent no.1 has complained that even the order dated 15.03.2023 was not complied with by the Bank till the filing of the Contempt Petition. The Bank is warned that any delay in compliance with the order shall be strictly dealt with.

15. In case the original disability certificate of the respondent no.1 is in the records of this Court, the same shall be returned to the respondent no.1, retaining a certified copy thereof for the purposes of the record.

16. The statutory amount deposited with the Registry of this Court, along with any interest accrued thereon, be released to the appellant.

17. The appeal is disposed of in the above terms.

NAVIN CHAWLA, J

JULY 28, 2023/rv/ss