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

% *Decided on: 28.11.2019*

+ **MAC.APP. 585/2019**

RAHUL

..... Appellant

Through: Mr. R.S. Roy, Adv.

versus

NEPAL SINGH & ORS (UNITED INDIA INSURANCE CO. LTD.

.....Respondents

Through: Mr. Suprabh Kumar Roshan, Adv.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (Oral)

CM APPL. 24402/2019 & 24403/2019

1. For the reasons mentioned in the applications, the delay in filing and re-filing of the appeal is condoned.
2. The applications stand disposed off.

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3. The appellant/injured impugns the award of compensation dated 14.11.2018 passed by the learned MACT in MACT Petition No. 487-12 (New No. 50111-16) on the ground that the he had sustained grievous injuries in the motor vehicular accident which occurred on 21.09.2012 and the learned Tribunal has erred in considering the same.
4. The learned counsel for the appellant submits that the appellant was treated at Sanjay Gandhi Hospital, Mangol Puri, Delhi, and a Disability Certificate was issued to him, certifying that he has suffered 16% permanent

disability in relation to right lower limb and he was diagnosed with post traumatic stiffness of right hip. He was merely 16 years of age at the time of the motor accident. The learned Tribunal considered his functional disability apropos his whole body as 10%. It held, *inter alia*, as under:

".....In the present case, the petitioner suffered grievous injuries with 16% permanent disability in relation to right lower limb. PW3 has deposed that the petitioner could sell the vegetables on rehri, however, he would face some difficulty in squatting and cross leg sitting. He further deposed that the fracture has united, the patient need not take out the inserted rod and it might be taken out if he feels any difficulty. From the material available on record, the functional disability suffered by the claimant in the case at hand is taken as 10% in relation to whole body."

5. The Court would note that the learned Tribunal has granted him Rs. 1,00,000/- towards 'pain and suffering' and Rs. 25,000/- towards mental agony to the parents whose minor child is suffering from the trauma of an unfortunate accident. The aforesaid amounts were granted to the appellant/injured in view of the decision of the Supreme Court in ***Kumari Kiran Thr. Her father Harinarayan vs. Sajjan Singh & Ors.***, (2015) 1 SCC 539 and in terms of the decision of this Court in MAC. APP. 345/2011 titled as ***National Insurance Co. Ltd. vs. Baby Heena & Ors.***, decided on 14.03.2016. The appellant/injured was also granted Rs. 1,00,000/- towards 'permanent disability/loss of amenities' in terms of ***Master Mallikarjun vs Divisional Magistrate, National Insurance Co. Ltd.& Anr.***, (2014) 14 SCC 396. Sundry amounts had also been granted by the learned Tribunal towards medical expenses, attendant, transport, special diet and future medical expenses and loss of life.

6. The Court is of the view that for an adolescent of mere 16 years, who had an entire life of promise ahead of him, has been condemned to a life time of suffering, along with stiffness in his hip, which would constrain him in running. Accordingly, the quantum towards 'permanent disability/loss of amenities' is enhanced to Rs. 2,00,000/-. Apropos this issue, this Court in MAC APP. 489/2019 titled as ***National Insurance Co. Ltd. vs. Shivani & Ors.***, decided on 24.04.2019, while examining the permanent injury sustained by a six year old girl, had enhanced the compensation towards 'pain and suffering' from Rs. 1,00,000/- to Rs. 5,00,000/- for the following reasons:-

“3. In the present case, a six year old girl has been disabled permanently, in such a manner that she would not be able to live a normal life, as she did prior to the unfortunate accident. She would not be the same girl, who played with the children of her age in her neighbourhood park or in her school playfield or run about with gay abandon whenever she desired. She may well have to be assisted and cared-for for the rest of her life. Therefore, looking at her permanent dependency on other persons, her quality of life would be affected irreparably, as would her participation in sports and other regular activities of children her age. Her social life too could be impaired, and who knows, her personal life and relations could be affected in myriad ways.”

A Special Leave to Appeal (C) No. 19579/2019 against the abovementioned order was dismissed on 23.08.2019.

7. The appellant/injured is a vegetable vendor and earning his livelihood to assist his family. He was rendered disabled after the said unfortunate

accident, while the disability for a year has not been proven. Nevertheless, his 16% permanent disability in the right lower limb is now certified by the Disability Certificate. The movement of his body in dealing with customers while vending vegetables, etc. would surely be restricted, and would be a cause for personal suffering. Also, he would not be able to play with his friends. In the circumstances, the quantum towards 'pain and suffering' is enhanced from Rs. 1,00,000/- to Rs. 5,00,000/-.

8. The learned Tribunal has granted compensation towards 'cost of nursing/attendant' @ Rs. 15,000/-. With regard to the nature of the disability suffered by the young man, he would surely require an attendant at all times. In the circumstance, the compensation on the aforesaid head is enhanced from Rs. 15,000/- to Rs. 2,00,000/-.

9. Accordingly, the amount payable to the appellant/injured shall be as under:

S.No.	Particulars	Amount
1.	Permanent disability/loss of amenities	Rs. 2,00,000/-
2.	Pain and suffering	Rs. 5,00,000/-
3.	Cost of nursing/attendant	Rs. 2,00,000/-
	TOTAL	Rs. 9,00,000/-

10. Let the aforesaid amount along with interest @ 9% from the date of filing of claim petition till its realization, be deposited before the learned Tribunal, within a period of 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 the disbursement specified therein.

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

NAJMI WAZIRI, J

NOVEMBER 28, 2019

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